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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, ~~1962~~ 1963

No. ~~606~~ 39

NEW YORK TIMES COMPANY, PETITIONER,

vs.

L. B. SULLIVAN.

No. ~~609~~ 40

RALPH D. ABERNATHY, ET AL., PETITIONERS,

vs.

L. B. SULLIVAN.

ON WRITS OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ALABAMA

PETITIONS FOR CERTIORARI FILED NOVEMBER 21, 1962
CERTIORARI GRANTED JANUARY 7, 1963

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RECORD PRESS, PRINTERS, NEW YORK, N. Y., MAY, 1963

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Grover C. Hall, Jr., having been duly sworn, was called as a witness for the Plaintiffs and testified as follows:

Direct examination.

By Mr. M. R. Nachman, Jr.:

Q. This is Mr. Grover C. Hall, Jr.?

A. Yes, sir.

[fol. 485] Q. You are the Editor of the Montgomery Advertiser?

A. Yes, sir.

Q. Mr. Hall, I show you a document which has been previously identified as Plaintiffs' Exhibit No. 310 and ask you whether you recognize that?

A. Yes, sir.

Q. I will ask you whether that came to you through the mail in Alabama?

A. That is correct.

Mr. Nachman: Your Honor, with that identification we would like to introduce this document into evidence.

Mr. Embry: Just a minute. Do you know when you received that?

The Witness: I am fairly certain it was sometime in June because I have since seen the envelope with my handwriting on it postmarked June 23rd.

Mr. Embry: Do you mean June 23rd of 1960?

The Witness: Yes.

Mr. Embry: Do you have the envelope you received it in?

The Witness: Mr. Nachman has it.

Mr. Embry: Off the Record for a minute, Mr. Reporter.

(Off the Record discussion between counsel.)

By Mr. T. Eric Embry: (Continuing)

Q. You don't have the envelope in which you received this?

A. Not unless it is there.

Mr. Embry: I want to ask him a few more questions, Your Honor, on Voir Dire to see whether I want to object to it or not.

The Court: Go ahead.

By Mr. T. Eric Embry: (Continuing)

Q. Do you know—I assume you meant by the mail the United States mail that you received this through—

A. Yes.

Q. Do you know by whom it was prepared or by whom it [fol. 486] was actually physically put together and sent from and deposited in the mail before you received it in June?

A. Not beyond the return addressed envelope.

Q. Or who printed it?

A. No. I don't know who printed it.

Q. You don't have any independent knowledge of that, do you?

A. No, sir.

Mr. Embry: Did Your Honor hear the last question I asked? The last question I asked was that I asked Mr. Hall if he had any independent knowledge of who printed or prepared that material or who physically put it together and deposited it in the mail in June of 1960 and I assume it was postmarked in New York or some place in that area or do you have any knowledge of that?

The Witness: It just came in with a mass of other mail and—

Mr. Embry: You don't know, in fact, where it came from, do you?

The Witness: I could not testify it was postmarked New York except the return—

Mr. Nachman: Is the envelope here that came with it?

The Witness: That's right.

Mr. Nachman: We will introduce that too, Your Honor.

Mr. Embry: We object to the document, Your Honor. We don't see where it has any evidentiary value particularly with respect to the time that Mr. Hall testified that he received it which was long following the time of April 21st through the 26th—

The Court: It was received after the filing of this suit—

Mr. Nachman: Again, Your Honor, as yesterday, it represents a course of conduct and we don't think that this course of conduct stops. If we can show a continuation of the course of a promotional conduct, then we think it is relevant and I think Mr. McCade recognized it as being promotional material.

Mr. Embry: The fact that it was deposited in the United [fol. 487] States mail and delivered by mail into the State of Alabama is no evidence on the question of whether or not this defendant was doing business in the State of Alabama in April of 1960—

The Court: I believe it would be admissible. I will let it in and give you an exception.

Mr. Embry: We except, if the Court please.

(One New York Times Brochure pertaining to The New York Times Index and envelope, offered and received in evidence and identified as Plaintiffs' Exhibit No. 310.)

Mr. Nachman: We have no further questions for Mr. Hall.

Mr. Embry: Well, just a minute. I would like to ask a few questions.

Mr. Nachman: Well, we object to any questions that go beyond the identification of that document.

The Court: Well, let's see what they are. You may be unduly alarmed.

Cross examination.

By Mr. T. Eric Embry:

Q. Mr. Hall, is the Montgomery Advertiser a member of the Associated Press?

A. Yes.

Mr. Nachman: We object to that, Your Honor. That goes completely beyond the scope of Direct Examination—

The Court: Well, let's leave it in for whatever value it may have. Go ahead.

By Mr. T. Eric Embry: (Continuing)

Q. Do you consider that the Montgomery Advertiser is [fol. 488] doing business in New York City when it uses the facilities of the Associated Press as a member thereof?

Mr. Nachman: Just a minute! We object to that.

The Court: What are the grounds for your objection?

Mr. Nachman: Well, first of all, Your Honor, it goes completely beyond the scope of Direct Examination. All we

did was ask Mr. Hall to identify a document and now they are asking him whether he considers that The Advertiser does business in New York.

Mr. Beddow: That's what we thought, Your Honor, when they attempted to show that the Associated Press was an agent or an employee—by virtue of the fact that they were a member of the Associated Press and received information from the Associated Press that they were an agent of The New York Times. The whole thought, in my opinion, was asinine but they asked the question and we have a right to do the same things as I see it.

Mr. Nachman: Well, that's legal argument, Your Honor, and Mr. Loeb, as I recall it, was the one who volunteered the information about the Associated Press when I was examining—

The Court: Well, I will let it in and give you an exception.

Mr. Baker: I would like to add the additional ground, Your Honor, that it calls for the opinion of the witness on a question of law.

The Court: Go ahead.

Mr. Baker: We except.

The Witness: Will you repeat the question?

By Mr. T. Eric Embry: (Continuing)

Q. Do you remember the question?

A. No.

Q. Do you consider that by your membership in the Associated Press, your being the Montgomery Advertiser, of course, and your membership in the Associated Press and being a recipient of the services of the Associated Press which is located in New York City, that the Montgomery [fol. 489] Advertiser is doing business in New York City?

A. Well, in this case I suppose you would describe our relationship as being a quasi since it is a co-op. All the newspapers that are members of the Associated Press are the equivalent of stockholders.

Q. Don't you pay for the services you get?

A. Yes. The two papers—over one hundred thousand dollars a year.

Q. All right. That's all, sir.

New York Times Company Assignment of Additional Grounds of Objections

Mr. Embry: Under the stipulation and agreements had throughout the hearing on the Motion to Quash in the L. B. Sullivan case wherein it was agreed that counsel for The New York Times Company could assign any additional grounds of objections to questions propounded to the various witnesses and to the introduction of documentary evidence that they saw fit so to do, such stipulation being for the purpose of saving the Court's time on the original hearing, the defendant, The New York Times Company, wishes to and does assign the following additional grounds of objection. To each objection made originally to questions propounded to the witnesses and the introduction of documentary evidence, that the questions called for a mental operation of the witness and not facts and that the questions called for an answer which does not tend to prove or disprove whether Don McKee and John Chadwick were agents of The New York Times Company so that purported service upon McKee would constitute valid service upon this defendant. It does not tend to prove whether or not the Times did business in Alabama or whether the cause of action attempted to be stated in the complainant's cause accrued from or was incident to the doing of business or performance of work or service in Alabama by The New York Times Company or its agents, servants or employees and that these same grounds of objection apply to the introduction of the various exhibits offered by the plaintiff. Further grounds of objection to questions propounded to the various witnesses as well as to the introduction of documentary evidence are that the question and the evidence sought to be adduced by an answer thereto and the documents would not be material or legal evidence such as would authorize a construction by the Court of Section 199 (1) of Title 7, Code of Alabama 1940, that would per-

[fol. 489a] mit the Court to assert jurisdiction over the person of The New York Times Company, a corporation, and to admit such evidence for such purpose would be such a misapplication of the law as would deprive this defendant of its property without due process of law in contravention

or violation of the Fourteenth Amendment of the Constitution of the United States and in contravention or violation of Article 1, Section 6, of the Constitution of Alabama 1901, and would deny to this defendant equal protection of the law in contravention or violation of the Fourteenth Amendment of the Constitution of The United States and would constitute an abridgement of freedom of the press in contravention or violation of the First Amendment to the Constitution of the United States, taken together with the Fourteenth Amendment of the Constitution of the United States and would impose an unreasonable burden upon Inter-State Commerce in contravention or violation of Article 1, Section 8 of the Constitution of the United States and such questions and the evidence sought to be adduced therefrom and such documents would be illegal and immaterial as a basis for the Court construing or holding that Don McKee was an agent of this defendant upon whom service of process might be had so as to support a holding by the Court that any purported service upon him would subject this defendant to the jurisdiction of this Court and the admission of such evidence and the holding on the basis of such evidence that he was an agent so as to subject this defendant to the jurisdiction of this Court, would deprive this defendant of its property without due process of law in violation of the Fourteenth Amendment of the Constitution of the United States and in violation of Article 1, Section 6 of the Constitution of Alabama, 1901, and would deny to this defendant equal protection of the law in violation of the Fourteenth Amendment of the Constitution of the United States and would abridge freedom of the press in violation of the First Amendment to the Constitution of the United States, taken together with the Fourteenth Amendment of the Constitution of the United States and would impose an unreasonable burden upon Inter-State Commerce in violation of Article 1, Section 8 of the Constitution of the United States.

[fol. 489b]

COLLOQUY RE INTRODUCTION OF EVIDENCE

Mr. Nachman: Do you have the Motion to Quash, Mr. Embry?

The Court: Here it is.

Mr. Nachman: I don't know whether this is necessary, Your Honor, but we would like to introduce into evidence the Motion to Quash as our next exhibit.

The Court: Well, you can do it but I think it is part of the Record anyway.

Mr. Embry: Under the statute, Your Honor, I think motions are a part of the Record but we will stipulate that it is a part of the Record—

Mr. Nachman: And goes into evidence? It goes into the Record?

Mr. Embry: Well, I think—well, I had better not think. You are talking about the whole thing.

The Court: The whole thing.

Mr. Nachman: Yes, the whole thing.

The Court: Well, the whole thing is in. It is part of the Record.

Mr. Nachman: Your Honor, in introducing into evidence we would like to call your particular attention to Ground 6 of the prayer which reads as follows: "This Court dismissed this action of The New York Times Company, a corporation, for lack of jurisdiction of the subject matter of said action." At the appropriate time when the law is argued we expect to urge on Your Honor that that constitutes a general appearance and the majority of jurisdiction in this country hold that a special appearance is waived by urging—

[fol. 490] The Court: That would be a question of law. What do you have next?

Mr. Nachman: As our next exhibit, Your Honor, we would like to introduce a certified copy of the—well, I believe that it was stipulated that the Motion to Quash would be considered part of the Record.

Mr. Embry: Yes. I think so.

Mr. Nachman: And considered as evidence.

Mr. Embry: I think so.

Mr. Nachman: We would like to introduce this certified copy of the petition for mandamus which was filed by this defendant in the Supreme Court of Alabama.

The Court: Is this the recent one?

Mr. Nachman: Yes, sir. In connection with this case, Your Honor. It is certified by J. Render Thomas, Clerk of the Supreme Court of Alabama.

The Court: All right. Go ahead.

(Petition for Writ of Mandamus, filed in the Supreme Court of Alabama, June 29, 1960 in the matter of Ex Parte, The New York Times Company, a Corporation, Petitioner, versus Honorable Walter B. Jones, individually and as Judge of the Circuit Court of Montgomery County, Alabama, Respondent. In the Supreme Court of Alabama, Third Division and Allied Papers attached thereto, offered and received in evidence and identified as Plaintiffs' Exhibit No. 311.)

Mr. Nachman: As our next exhibit, Your Honor, we would like to introduce a certified copy of the Memorandum Brief of Authorities in support of the petition for Mandamus, that is, the one that we have just previously introduced.

Mr. Embry: Your Honor, I can't see the pertinency of [fol. 491] a Brief of Authority filed in the Supreme Court. Now, if I understand his theory, he is going to contend that the filing of the petition in the Supreme Court constitutes a general appearance in this cause but I don't see that a Brief on the law would be any part of it.

Mr. Nachman: The relevancy, Your Honor, is this. The authorities that we rely on hold that if persons in urging that an order or decree or judgment of the Court be set aside urges non-jurisdictional grounds as well as jurisdictional grounds, that that is a waiver of th special appearance and the Brief, we contend, raises no jurisdictional grounds at all and is—

The Court: Is this the Brief filed in the Supreme Court?

Mr. Nachman: Yes, sir. In support of the petition which we have just introduced in evidence and it spells out why—the reasons why this petitioner urged the Supreme Court

to grant the petition for Mandamus and there are no jurisdictional grounds in it.

The Court: Well, I will let it in sort of as a complement to the petition.

Mr. Nachman: Yes, Your Honor. It goes along with it.

(Memorandum Brief of Authorities in support of Petition for Mandamus filed in the Supreme Court of Alabama, June 29, 1960, in the matter of Ex Parte, The New York Times Company, a Corporation, Petitioner, versus Honorable Walter B. Jones, individually, and as Judge of the Circuit Court of Montgomery County, Alabama, Respondent, in the Supreme Court of Alabama, Third Division, No. 927 and Certificate attached thereto of J. Render Thomas, Clerk of the Supreme Court of Alabama, offered and received in evidence and identified as Plaintiffs' Exhibit No. 312.)

Mr. Nachman: Next, also in that connection, Your Honor, we have a certified copy of the Order of the Su-
[fol. 492] preme Court on the petition which we offer into evidence.

The Court: All right. Go ahead.

(Order of the Supreme Court of Alabama, Third Division, No. 927 in the matter of Ex Parte, The New York Times Company, a Corporation, Petitioner, versus Honorable Walter B. Jones, individually and as Judge of the Circuit Court of Montgomery County, Alabama, and Certificate of J. Render Thomas, Clerk of the Supreme Court of Alabama, attached thereto, offered and received in evidence and identified as Plaintiffs' Exhibit No. 313.)

Mr. Nachman: Again, Your Honor, these documents may be also a part of the Court files like the Motion to Quash. One is the Motion for an extension of time to file these documents and the other is the Order of Your Honor granting the extension of time and we may have the same stipulation—

Mr. Embry: I assume those things are either in your Honor's Motion Docket or in this Court file, one or the other, but under the statute there is no question but that they are part of the Record in this case and we will so stipulate.

Mr. Nachman: And can be considered as evidence.

Mr. Embry: Surely.

Mr. Nachman: Now, can we introduce, again on the same theory, the appearance sheets on the deposition which we took on the merits? There are three of them.

Mr. Embry: Well, it will be all right if you will introduce the notice. If you will introduce the notice where we were given notice to—

Mr. Nachman: Well, that's why I made the statement for the Record that that was what we wanted to introduce.

Mr. Embry: If the notice where we took the deposition where you gave us notice to appear and shows that we [fol. 493] appeared in conformity with that notice and agree that we did that and it indicates that we did that—

Mr. Nachman: Well, page 4 of this deposition recites Mr. MacLeod's statement and Mr. Baker's statement and my statement and if that is the only thing you want to put in we can read it in or however Your Honor would prefer it to be done.

Mr. Embry: Well, of course, that doesn't show the notice we were given. That's the point I am making.

Mr. Nachman: Well, the notice I think will be a part of the Court file. Let's see.

Mr. Embry: Well, get it too and we can read both of them.

Mr. Nachman: Well, we will be glad to introduce that along with this.

Mr. Embry: Well, this is for the Court Reporter's benefit in making the Record. On file in the case of L. B. Sullivan, this is The New York Times Company and others and so that he will know what we are talking about he might mark it as an exhibit, the notice of the—

Mr. MacLeod: Now, in the deposition we had the agreement that the same statement would be part of the other two—

Mr. Nachman: That's right. The same statement would be part of the others too. Now, if there is any other portion that you want read we can read it.

Mr. Embry: Well, supposing I read this and we won't have to put all that in.

Mr. Nachman: Well, that's what I was going to do. I was just going to read that page.

Mr. Embry: All right. Go ahead.

Mr. Nachman: Your Honor, I am reading from page 4 of the deposition of J. E. Lowery, which is on file in this Court in this cause, and I quote: "MacLeod: It is stipulated and stated for the Record that the presence of counsel for the defendant, The New York Times Company, is strictly in connection with the special appearance made the The New York Times Company to test jurisdiction of [fol. 494] the Circuit Court and is not in any wise a general appearance and not in any wise a waiver of the defendant, The New York Times Company's special appearance and is not a submission to the jurisdiction of the Circuit Court and is not a general appearance in this cause. Mr. Baker: The Plaintiff would like to state for the Record that these depositions have nothing whatsoever to do with the special appearance of The New York Times and we don't expect to adduce any testimony that would be relevant or pertinent or pertaining to the special appearance. This deposition relates solely to the merits of the controversy. Mr. Nachman: In amplification of Mr. Baker's statement, the primary purpose of this discovery is on the merits. Of course, we don't restrict the use of this deposition in any way at any stage of the proceedings." Then, I go on with a further statement—do you want me to put that statement in too?

Mr. Embry: No. Don't put that in.

Mr. Nachman: All right. Just stop after the word "proceedings" Mr. Reporter.

(Notice of taking of deposition in the matter of L. B. Sullivan, Plaintiff, versus The New York Times Company, a Corporation, and others, in the Circuit Court of Montgomery County, Alabama, Case No. 578, No. 579 and No. 580, dated June 15, 1960 and statements taken from page 4 of deposition taken by Walter E. Graham, Official Court Reporter of the 15th Judicial Circuit of Alabama at the Montgomery County Court House, Montgomery, Alabama, on June 24, 1960, offered and received in evidence and identified as Plaintiff's Exhibit No. 314.)

Mr. Nachman: Your Honor, we now have two depositions which we had previously taken of Mr. Claude F. Sitton and Mr. Thomas Hurley, both having been referred to throughout these proceedings and how would you like us to proceed with those, Your Honor?. Shall we read [fol. 495] them or—

The Court: Well, Mr. Baker might make a pretty good witness if you put him on the Stand to read it.

Mr. Embry: It will be perfectly agreeable to us that the written deposition themselves be introduced and that Your Honor treat the objections made at the time as objections before Your Honor and rule on them and examine the testimony by visual examination and if that meets with approval we will agree to that in order to save time.

The Court: Well, you have the Court's approval if it can be worked that way. What do you want to do, Mr. Nachman?

Mr. Baker: I am not quite sure just what your suggestion was, Mr. Embry.

Mr. Embry: Well, you can just mark the deposition as an exhibit and then where there is an objection made at the time the deposition was taken we will stipulate that that be treated as an objection made now when the Court considers it and let the Court rule any way it wants to on it and let it become a part of the Record that way.

Mr. Nachman: Your Honor, we don't want to burden this Court with a time consuming procedure but we feel that what is in here—we know that Your Honor will probably not have an opportunity to read them before the oral argument on the law and we do think it would be beneficial to Your Honor to have this before you hear the oral argument and I don't think it will take a very long time to read it.

Mr. Embry: All right. Do it your way then.

The Court: Go ahead. I would like to have a copy of the deposition in order to follow along with you.

Mr. Nachman: You may have my copy, Your Honor. I will read over Mr. Baker's shoulder.

Mr. Embry: Your Honor, we would like the stipulation appearing in the Record to be made a part of this Record also.

Mr. Nachman: All right. I will read those too. Now, Your Honor, I am reading and quoting from the deposition of Claude F. Sitton and Thomas M. Hurley, taken in At-
[fol. 496] lanta, Georgia, on Friday, June 3, 1960. I quote. "Mr. Embry: Let the Record show, Roland, that Mr. Daly and I appear for the sole purpose of cross-examination of this witness on any testimony elicited pertinent to the grounds of the Motion to Quash filed by the defendant New York Times Company in this case, and that by appearing we in no wise waive our limited and special appearance filed by filing the Motion to Quash, nor do we make any general appearance in the cause but appear solely at the taking of this deposition to cross examine as to evidence pertinent to the grounds contained in the motion to Quash on the basis of the jurisdiction of the Court and expressly objecting to the jurisdiction of the Court.

Mr. Nachman: I might state at this point we have stipulated with counsel for The New York Times that we understand that their appearance, or the appearance of their agents, at this deposition in no manner waives any grounds raised by their Motion to Quash Service and it is stipulated that it shall not be considered as a general appearance in this case. This deposition proceeding is taken pursuant to Act 375 of the Regular Session of the 1955 Alabama Legislature. It is stipulated that the signature of the deponents is waived.

(At This Point, Mr. Nachman Begins Reading the Questions Propounded in the Deposition of Claude F. Sitton and Thomas M. Hurley and Mr. Baker Reads the Answers Thereto.)

Q. Would you state your name, please, sir?

A. Claude—C-l-a-u-d-e—F., as in Frank Sitton.

Q. Are you a resident of Atlanta?

A. That's correct.

Q. Am I correct that you are employed by The New York Times Company, the defendant—one of the defendants in this case?

A. I am employed by The New York Times, yes.

Q. There is no distinction between The New York Times

as you use it and The New York Times Company, Incorporated?

A. I don't think so.

Q. Would you consult with your attorneys and see whether there is any distinction?

[fol. 497] Mr. Baker: Mr. Embry: That's correct.

Mr. Baker: Mr. Daly: I don't think it's "Incorporated;" it's The New York Times Company.

Mr. Baker: Mr. Embry: A company.

Mr. Embry: Your Honor, may I point out that the word "Incorporated" set out in quotes is not a part of the name.

The Court: Yes. Go ahead.

By Mr. N. R. Nachman, Jr.:

(Continues reading from deposition)

Q. A corporation. How long have you been employed by The New York Times, Mr. Sitton?

A. Since October, 1957.

Q. Beginning with that date, would you state for the Record what your duties have been with The New York Times?

A. From October, 1957, until May, 1958, I was employed as a copy editor with The New York Times in New York, resident of New York City. In May of 1958, I was transferred to the South as Southern Correspondent of The New York Times.

Q. I might interrupt at that point. At what place—to what place were you transferred in the South at that time, or did you continue to live in New York?

A. Well, my family continued to live in New York until July of '58, and I actually had no residence as such.

Q. In other words, the change of assignment at that time did not—

A. Well, my legal residence all along has been Rockdale County, Georgia—my legal residence, that's where I voted and so forth. I actually only rented an apartment in New York.

Q. Go ahead.

A. And since May of '58 I have covered the South for The New York Times, southern territory.

Q. You have, you say, held the same position with The Times since that date in 1958?

A. That's correct.

Q. Up to the present time?

[fol. 498] A. That's correct.

Q. What is your position in Atlanta, what is the title that you have, is it Southern correspondent?

A. Southern correspondent.

Q. The Times does have an office in Atlanta, does it not?

A. I have desk space at the Constitution.

Q. I see. How many employees does The Times have in Georgia, in Atlanta?

A. Two that I know of.

Q. You and Mr. Hurley?

A. No, myself and a part-time secretary.

Q. Did John Popham ever live in Atlanta?

A. No.

Q. Did he ever have a position as Southern correspondent of The Times?

A. Yes, he did.

Q. He was your predecessor?

A. That's correct.

Q. In a general way, Mr. Sitton, would you outline what your duties are as Southern correspondent of The New York Times?

A. Well, to cover news in the South.

Q. Gather news?

A. That's correct.

Q. What area is embraced by the term "South" as you use it?

A. Virginia, Kentucky, North and South Carolina, Tennessee, Georgia, Florida, Alabama, Mississippi, Louisiana and Arkansas.

Q. Does The Times have other so-called regional correspondents—if that is the correct phrase—such as yourself for other regions?

A. Yes.

Q. How many other regions constitute the geographical break-down?

A. Well, actually, some of these men are not—well, we have a man in Boston, have a man in Detroit, have two men in Chicago, one man in San Francisco, two men in Los Angeles, one man in Hollywood.

Q. I take it from your earlier testimony that Atlanta is your base of operations, so to speak?

[fol. 499], A. That's correct.

Q. Is it your duty, Mr. Sitton, to regularly canvass the current events that are taking place in these states you have named and to transmit to The Times any newsworthy events that occur in those states?

A. No, only selected events.

Q. Who selects them?

A. Sometimes I do, sometimes The Times does.

Q. In other words, sometimes you're sent into these various states on special assignment from The New York office and other times—

A. It's sort of a case of mutual agreement. Some stories there's no question we should cover. Other stories, I confer with the desk in New York and after talking it over, we reach a mutual decision on it.

Q. Mr. Sitton, this is probably elementary to you but for those of us who aren't so well versed in the newspaper business, would you mind explaining how a news story, let's say, gets to The New York Times for publication; suppose you're covering a news event in one of these states, how would you get the story to The New York Times from that state?

Mr. Embry: We object, Your Honor, because the question—well, I withdraw that objection.

The Court: Yes, go ahead.

Mr. Nachman: I clear it up later, Your Honor.

By Mr. M. B. Nachman, Jr.:

(Continues reading from deposition.)

Q. Mr. Sitton, do you recall that on a Sunday, March 6, 1960, where you covered a so-called demonstration in the City of Montgomery, Alabama?

A. I think I did, yes.

Q. You were present in Montgomery on that date?
A. I think so.
Q. And you recall the demonstration I'm talking about which occurred on the corner of Dexter and Decatur Streets in Montgomery near the capitol in front of Martin Luther King's church and the Supreme Court Building?
A. I don't recall the demonstration. I was there, there [fol. 500] was some trouble there.
Q. I didn't mean to put the word "demonstration" in your mouth. You recall the occurrence there?
A. I recall an occurrence there. I was there, yes.
Q. In terms of Mr. Embry's objection, did you send a story to The New York Times covering that occurrence?
A. Yes, sir.
Q. Would you state how that story got to the Times for publication?
A. I called it in.
Q. From Montgomery?
A. That's correct.
Q. You dictated the story over the telephone?
A. That's correct.
Q. To someone in New York?
A. It was recorded on a plastic disc, yes.
Q. In New York?
A. Yes.
Q. In the offices of The New York Times?
A. Correct.
Q. In addition to the correspondents, the regional correspondents, that you named specifically in the states that come under your jurisdiction, does The Times have so-called string correspondents located in these states and specifically in Alabama?

Mr. Embry: Your Honor, we objected at that time and we object to the question now on the basis that the witness has answered the question.
The Court: Well, it looks like the next question cures that, doesn't it?
Mr. Embry: Yes, Your Honor. I think so. Go ahead.

By Mr. M. R. Nachman, Jr.:

(Continues reading deposition)

Q. Do you know?

A. You refer to my jurisdiction there. This is not really my jurisdiction. I have no—I'm—I'm simply a reporter [fol. 501] down here. I cover the South and as I said before, I told you the basis. I have no—no jurisdiction whatsoever over any other operations that might be conducted in this area.

Q. Well, do you know, or don't you, whether there are located in Alabama certain so-called string correspondents?

A. I know one stringer in Alabama, yes.

Q. What is his name?

A. Don McKee.

Q. Do you know a man in Birmingham named John R. Chadwick?

A. No, sir.

Q. Do you know whether or not he is a string correspondent?

A. I don't know him, how could I know?

Q. I thought you might be making a distinction between knowing him personally—

A. I've never talked to him, I've never met him.

Q. Do you know of his existence?

A. That would be hearsay, wouldn't it?

Q. Whether it would be hearsay or not—

A. I've heard that there is such a man there, yes, sir.

Q. And you've heard he is a string correspondent—

A. Yes.

Q. For the Times. Do you know, either personally or through hearsay, of a man named Castle in Mobile who—

A. I've heard his name mentioned once.

Q. As a string correspondent of The Times?

A. Yes.

Q. Do you know a man named William McDonald in Montgomery?

A. Yes.

Q. Do you know whether or not he was at one time a string correspondent for The Times?

A. He told me he was.

Q. Do you know a man named G. C. Long in Montgomery?

A. No.

Q. Do you know a man named Murphy in Montgomery [fol. 502] who was at one time a string correspondent for the Times?

A. What is his full name?

Q. Charles Murphy, I believe.

A. I don't know. I don't know this man who was a former string correspondent of The Times. Whether I met him or not, I do not know. I don't recall. I don't recall ever meeting a man by that name but it's possible, but I don't know him as a former string correspondent for The Times.

Q. What are the duties of a string correspondent, Mr. Sitton?

A. I've never been a string correspondent. I couldn't testify to that.

Q. Do you, as a result of having been with The New York Times since 1957, I believe you said—is that correct?

A. Correct.

Q. Do you know from general knowledge you have obtained of the workings of The New York Times what the duties of a string correspondent are?

Mr. Embry: We object to that question, Your Honor, on the basis that it calls for a description and outline or description and it presupposes that they have duties and his testimony already has been that he is not familiar with how they conduct the operations, if it is conducted, with reference to stringers.

The Court: That sounds like a good objection. Apparently he doesn't know much about it.

Mr. Embry: If Your Honor will notice line 7 on page 30—

Mr. Nachman: Well, Your Honor, I will withdraw that question. We will go on with the next question.

The Court: All right. Go ahead.

By Mr. M. R. Nachman, Jr.:

(Continues reading from deposition.)

Q. I didn't ask you under whose supervision they were. I asked you whether you knew what their general duties were from your knowledge of the workings of The New York Times.

The Court: It looks like we go to the top of page 13 now. [fol. 503] Mr. Embry: Well, I object to it because it assumes they have duties as opposed to the relationship shown by the evidence previously adduced, Your Honor. The contention we made, Your Honor, is that they sell stories and their contention is that they are employees and I think it is an unauthorized assumption.

The Court: I will let it in. You may have an exception.

Mr. Embry: We except, Your Honor.

Mr. Nachman: We will start at the top of page 13, then.

The Court: Go ahead.

By Mr. M. R. Nachman, Jr.:

(Continues reading from deposition)

Q. I am, of course, referring to string correspondents.

A. I assume they file stories to The Times. News stories.

Q. Mr. Sitton, I don't mean this as an exclusive breakdown but I have noticed, in reading The Times, that there seem to be several ways in which a story is identified. In some instances, it is identified by a by-line written by a correspondent such as yourself. In other instances, it's identified by either an AP or UP symbol.

A. Yes.

Q. In that instance, I take it, The New York Times is getting its story from the wire services of either the AP or UP as the case may be. Is that correct?

A. I suppose it's correct, yes.

Q. In a third instance, there is—the story is identified as it is on page 50 of the Sunday, April 10—Sunday, April 10, 1960 edition of The Times, a page of which I show you.

A. With just a "special" slug on it.

Q. That's correct.

A. They use that sometimes on my stories. For example, I may have three or four stories in the paper and we have a rule only—they give only one by-line and I get a by-line on one story and the other stories have "Special, New York Times."

Q. When a story is identified as it has been in this issue of The Times—let me identify this for the Record as [fol. 504] Plaintiff's Exhibit 1. When it's identified as it is here now, "Special to The New York Times," and then a Montgomery, Alabama, dateline, does that indicate that the story or the basis—the facts that form the basis of the story have been sent in to The New York Times office by someone in Montgomery?

Mr. Embry: No objection.

A. I don't really know. I can't say. I mean I just don't know.

Q. Well, doesn't The Times have some general methods of identifying news stories? Doesn't this "Special to The New York Times" phrase mean anything in the manner in which The New York Times identifies its stories?

A. It means it's a special.

Q. What does that mean, that it's a special?

A. Well, as I say before—I said before, sometimes I file stories that don't have my by-line on them but have "Special to The New York Times."

Q. Let me put it this way, Mr. Sitton. It does indicate, does it not, it did not come in from one of the wire services, isn't that correct?

A. I think—I think that would be correct, yes.

Q. In other words, when The Times is using a wire service story, it identifies it either AP or UP. I don't know whether they use INS, but anyway, either AP or UP. Is that correct?

A. Sometimes. Sometimes they put it in the body of the story.

Q. There is an attribution when they use an AP or UP story, is there not?

A. I'm a reporter. I'm not a desk man. I don't work in New York now.

Q. I understand that.

A. I can't—I cannot—I think so, as far as I know. But I can't testify to that from first-hand knowledge.

Q. And your testimony is you don't know then, what the phrase, "Special to The New York Times"—

A. Yes.

Q. Is designed to connote?

A. It means it's a special. It isn't sent in by the wire—either of the wire services.

[fol. 505] Q. Do you know what category of persons send those stories in?

A. I send them in.

Q. You send them in?

A. Yes.

Q. Or some other correspondent?

A. No, not another correspondent necessarily.

Q. I don't mean for this particular story. I mean—

A. Yes. Stringers. They send in stories, I think, that are slugged in that manner.

Q. That's what I was getting at. When stringers send in those stories, they are also designated "Special to The New York Times," are they not?

A. I think so, yes.

Q. In a fourth category of stories, there's no identification whatever. It's just a story, so to speak.

A. Yes.

Q. What does that indicate? Is that a rewrite or—

A. No, the small city stories that don't carry a by-line generally carry no slug at all.

Q. Mr. Sitton, do you recall any discussion you had with Don McKee, specifically, in around the time of the Civil Rights Commission hearings in Montgomery in late December of 1958 and early January 1959 about becoming a string correspondent for The New York Times?

A. I did talk with him about it, I think. Yes.

Q. And did you specifically solicit for The Times his services as a string correspondent for The Times?

Mr. Embry: Let me see now whether I need to object to that. Let me look ahead here in the Record for a minute, Your Honor.

The Court: It looks like at this point we have a lot of incompetent, irrelevant and immaterial grounds of objection—

Mr. Baker: He declines to answer.

Mr. Embry: Where is that?

Mr. Baker: He declines to answer at the top of page 17-A, Your Honor.

Mr. Nachman: Down at the bottom of page 17-A—

[fol. 506] Mr. Embry: He answers there. We spent about a half hour arguing about it and then I think he answers—

Mr. Nachman: We go to the bottom of page 17-A then? Is that right, Mr. Embry?

Mr. Embry: Yes, I think so.

Mr. Baker: Shall I start reading again?

Mr. Nachman: Yes, start reading at line 23 on page 17-A.

A. To the best of my knowledge, I spoke to McKee and told him that we had no stringer in Montgomery and I thought The New York Times was interested in a stringer and I asked him if he was interested. He indicated he was. I told him I would pass his name on to New York and that they would get in touch with him.

Q. Was Mr. McKee recommended to you by anybody or did you happen to know him personally?

A. I don't really recall. I had known him. I had met him on visits to our advertiser. I don't recall. He might have been. I might have spoken to someone about him—asked whether he was a good man or I might have seen some story he had written. I don't recall.

Q. In answering the question, you used the word "interested," that The Times was interested in having a stringer in Montgomery. Why was The Times interested in having a stringer in Montgomery?

Mr. Embry: We object to that, Your Honor. It calls for a mental operation of the witness. It is not shown to have been within the realm of his knowledge and was the result of a discussion between—

Mr. Baker: He declined to answer.

Mr. Embry: He declined to answer but he was asked a further question on page 19 as to who told him that The

Times was interested in having a stringer and he answered—

Mr. Baker: Well, shall we skip to the bottom of page 18?

Mr. Embry: Yes. Go on down to line 24 on page 18.

[fol. 507] By Mr. M. R. Nachman, Jr.:
(Continues reading from deposition)

Q. How did you know the Times was interested in having a stringer in Montgomery?
A. They had told me.

Mr. Nachman: Shall we skip to line 9 on page 19 now?
Mr. Embry: Yes.

By Mr. M. R. Nachman, Jr.:
(Continues reading from deposition)

Q. Who told you that The Times was interested in having a stringer in Montgomery?
A. To the best of my knowledge it was Harold Faber, the Assistant National News Editor.

Mr. Nachman: That is mis-spelled. That was the gentlemen who testified—
Mr. Embry: Yes. Let the answer read "Faber."
Mr. Nachman: Now, let's go down to line 24 on page 19.
Mr. Embry: Yes.

By Mr. M. R. Nachman, Jr.:
(Continues reading from deposition)

Q. What are Mr. Faber's duties in regard to stringers?
A. I don't feel competent—I don't feel competent to answer that question. I don't work in New York.
Q. You don't know?
A. No. I don't work in New York. I've never worked on the National News Desk. I just—I don't feel I'm competent to answer.
Q. It's your testimony here you have no knowledge whatever of the relationship between Mr. Faber, Mr. Harold Faber, and the stringers?

A. I don't think I said that.

Q. I'm asking you is that your testimony?

A. No.

Q. Would you state what knowledge you have about Mr. Faber's relationship with the stringers?

A. Could you ask me a specific question about—you're asking me to generally describe his relationship with the stringers?

[fol. 508] Q. That's correct.

A. I can't do that. If you ask me a specific question about his relationship with the stringers—possibly I can answer.

Q. Well, would—

A. I can't generally give you a description of what he does, no.

Q. I'm asking the question that way. If it is your answer that you can't tell me what general knowledge you have about Mr. Faber's relationship with the stringers, that's your choice.

A. Well, now, the best of my knowledge, and this is—this is—this is almost completely hearsay because I have never been present at any time when Mr. Faber had any dealings with stringers. Mr. Faber—he gets in touch with the stringers when he is interested in having a report on some event that's taking place and requests that they file a story.

Q. What does he have to do with the employment of stringers?

Mr. Embry: We object to that as it calls for a conclusion on the part of the witness, Your Honor. It assumes that they are employed.

The Court: I think the objection would be good.

Mr. Nachman: Well, Your Honor, we don't insist on it. He never answered it anyway. We will skip down to line 20 on page 21 now.

By Mr. M. R. Nachman, Jr.:

(Continues reading from deposition)

Q. Mr. Sitton, I understand you may not know everything about these questions I'm asking you and of course,

you're free to limit the extent of your knowledge anywhere you want to. But this is a discovery proceeding and we intend to obtain this discovery as fully as possible. I think it might save us all a lot of time and expense if you would answer the questions to the best of your knowledge and as fully as possible, limiting the answers in any way you see fit. I'm not trying to [illegible] you to go beyond the scope of your knowledge.

A. I'm trying to be as cooperative as possible.

Q. It will save a lot of time and expense.

A. Surely. I would like to do that.

[fol. 509] Mr. Embry: We objected then, Your Honor.

Mr. Nachman: We will skip over to page 23, line 2, Your Honor.

The Court: All right. Go ahead.

By Mr. M. R. Nachman, Jr.: (Continues reading from deposition)

Q. Mr. Sitton, I would like to get back to my question as to those operations and ask you again to give us your knowledge and information about the relationship of the stringers to The New York Times.

A. Well, as I said, they file—I assume—I suppose that they file stories to The New York Times from time to time for which they are paid.

Q. And are they people who are on call from The Times to file stories when The Times wants a story from a given area where they live?

Mr. Embry: We objected to that.

Mr. Nachman: Well, that question was not answered.

Mr. Baker: We go down to line No. 15 on page 23 now?

The Court: Yes.

By Mr. M. R. Nachman, Jr.: (Continues reading from deposition)

Q. Does the Times regularly ask these stringers for stories regarding certain news events in the areas in which these stringers live?

A. What do you mean by "regularly"?

Q. Well, is this regular procedure of The Times, that when The Times feels that there is a news story of note going on in an area where a particular stringer lives, that The Times calls on this stringer for a story?

A. I will answer your second question, yes.

Q. And that's the purpose of having the stringer there, isn't it?

Mr. Embry: We object to the purpose of having a stringer there, Your Honor. I think that would be up to the Court to deduce from the testimony as to what the purpose was in having such a person and it is a conclusion of the witness.

The Court: Well, I think it would be a shorthand rendition. I will let it in.

[fol. 510] Mr. Embry: We except.

Mr. Nachman: Begin reading and start with the answer at line 1 on page 24.

A. Sure.

Q. Of course it is. Am I not also correct Mr. Faber, for The Times—or at any rate, The Times send out instructions to the stringers, general instructions about how they are to conduct their business and their operation?

A. I don't believe I can—you can ask me to testify that. I don't work in New York. I'm not connected with the stringer system. I work in Atlanta. I'm a reporter. That's all. How do I know what Mr. Faber does? I've never seen Mr. Faber send out any instructions, no.

Q. Do you know of your own knowledge or through your general knowledge of the operations of The Times whether a general set of instructions is sent out to stringers?

A. A general set of instructions?

Q. General instructions in written form.

A. I've heard that there was, yes.

Q. That general instructions are—in written form are sent out to the stringers?

A. Wait a minute, now. Would you go into this "general instructions"? What do you mean by "general instructions"?

Q. I mean instructions to the stringers about how they

are to conduct their business insofar as it relates to The New York Times.

A. Conduct their business?

Q. The business of sending news stories in.

A. I think I've heard that instructions are sent out as to how they should transmit the stories, giving telephone numbers, that sort of thing, yes.

Q. And those instructions emanate from the home office, so to speak, in New York?

A. So I've heard, yes.

Q. Have you heard anything to the contrary?

A. No.

[fol. 511] Q. Do you have anything to do with the advertising?

A. No, sir.

Q. Do you know how ads are obtained from advertisers in Alabama for The New York Times?

A. No, sir.

Q. Mr. Sitton, when you go to Alabama—let's use your March 6th trip—are your expenses paid by The New York Times?

A. Yes, sir.

Q. What procedure do you follow in submitting your expenses to The New York Times for reimbursement?

A. I file a—file an expense account which is in the amount and I'm reimbursed for the amount of the expenses.

Q. Do you have regular specified forms for sending it in or do you send it in in your own way?

A. No, I have forms.

Q. Those forms are furnished by The Times?

A. That's correct.

Q. And are you reimbursed by check or other—special voucher?

A. They reimburse my account in a local bank.

Q. Does that mean that The Times deposits in a bank of your designation an amount equivalent to the amount you submit on your particular expense account?

A. If they agree with the expense account.

Q. Yes, on that assumption, of course.

A. That's correct.

Q. I assume that they would never disagree with such an able reporter as yourself.

A. Thank you, sir.

Q. It is, as I understand it, part of your job, Mr. Sitton, to be where the newsworthy events are going on in the area covered by the Southern correspondent. Is that correct?

A. Yes, sir.

Q. Would you consider that during the past four years that Alabama has been a rather newsworthy state?

A. Not—not overly so. Really, no. That's the last four [fol. 512] years—I've only been down here—

Q. Let's cut it off—

A. Yes, at the period I've been in the South.

Q. Yes, sir.

A. I wouldn't say overly so. I have—goodness alive! I've spent much more time in other states that I have in Alabama.

Q. Have you spent as much time continuously in other states?

A. Oh, yes.

Q. Leaving out Georgia, where you live?

A. Yes, yes, goodness.

Q. No, Mr. Sitton—

A. For example, I spent two months—two months at one whack in Little Rock without a day off.

Q. Now, am I correct, sir, you covered the Civil Rights Commission hearing in Montgomery with—which began on December 1, 1958?

A. To the best of my knowledge, I did, sir.

Q. And did that coverage necessitate your physical presence in Montgomery during this time?

A. I was there.

Q. You were there in Montgomery during the whole time?

A. I'm not sure about the whole time. I think I was there during the whole time to the best of my knowledge.

Mr. Embry: Excuse me, Your Honor. Now, may I move to exclude that testimony with respect to such time as he was here in December, 1958 and any reference to any

other dates in 1958, on our grounds previously stated to Your Honor—

The Court: Let me let it in and give you an exception.

Mr. Embry: We except, Your Honor.

Mr. Nachman: We go down to line 19 on page 27 now.

By Mr. M. R. Nachman, Jr.: (Continues reading from deposition)

Q. Was there another—were there any other Times correspondents there too during any of that period?

A. No, there are—

[fol. 513] Q. Let's use the period, say, from December 1, 1958, through January 29, 1959, roughly the months of December, 1958, and January, 1959.

Mr. Embry: I want to get an objection in there on the same grounds, Your Honor.

The Court: All right. Same ruling.

Mr. Embry: We except, Your Honor.

Mr. Nachman: We will continue reading on line 3 at page 28.

By Mr. M. R. Nachman, Jr.: (Continues reading from deposition)

Q. Were there any other New York Times correspondents other than yourself that were physically present in Montgomery during any of that period from early—

A. I think I heard one came over there the latter part of January. I'm not real sure about the dates on this.

Q. That was Russell Porter, was it not?

A. That's what I heard, yes.

Mr. Embry: Your Honor, I would like to have an objection to any period of time except from the 1st of January, 1960 through April and I would like to have an objection to each question along that line—

Mr. Nachman: I will be glad to agree to that.

The Court: Yes. All right. Go ahead.

Mr. Nachman: Let's see. Where did I leave off?

Mr. Baker: Start at line 9, page 28.

By Mr. M. B. Nachman, Jr.: (Continues reading from deposition)

Q. And he is a regular New York Times correspondent too, is he not?

A. As far as I know, yes, sir.

Q. A regularly salaried person.

A. As far as I know, yes.

Q. Now, what did your news gathering activities consist of while you were in Montgomery during this period?

A. Covering the hearing.

[fol. 514] Q. That means you attended the hearings, of course?

A. Uh-huh.

Q. And I believe there were some other proceedings in the United States District Court in Montgomery during that time?

A. Yes, sir.

Q. And you attended those?

A. Yes, sir.

Q. There were also, I believe, some events which took place outside of Montgomery, specifically, there were some events that took place in Barbour County?

A. Yes, sir.

Q. And there were some took place in the town of Clayton?

A. Yes, sir.

Q. And in the town of Union Springs?

A. Yes, sir.

Q. And you went down to those places?

A. Yes, sir.

Q. Did you go over to Wilcox County or Dallas County during that time?

A. No, sir.

Q. Did you interview any persons in Alabama, residents of Alabama, while you were there on this coverage?

A. Yes, sir.

Q. Would you state the names of some of the persons whom you interviewed?

Mr. Embry: Your Honor, we object to that and we renew our objection on the basis of an Alabama statute—

Mr. Nachman: We worked that out, I believe, Mr. Embry. We said that we weren't asking what the people said but just whom he talked to. Skipping over to line 11 of page 30, I said, "We're not asking you for the specific things they told you but for the names of the people you talked to." Then, Mr. Daly, said that he had no objection.

Mr. Embry: All right. Go ahead.

[fol. 515] By Mr. M. R. Nachman, Jr.: (Continues reading from deposition)

A. I talked to Sam Lemaistre down in Clayton, isn't it?

Q. Yes.

A. And talked to little George Wallace down at Clayton. I talked to Wallace's attorney, I forget his name. And a number of other people.

Q. And I take it you interviewed the members of the Civil Rights Commission from time to time, Mr. Hanna and others?

A. Interviewed them?

Q. Either interviewed them by yourself or as a part of a—as a part of the news conference.

A. I was there. I was there in the hearing room. Now, Mr. Story was foreman at that hearing. He issued statements. I put those down. I don't recall—

Q. Do you recall that the day before the hearing began there was a press conference on a late Sunday afternoon which the correspondents, newspaper people there, were given an opportunity to interview and ask questions of the members of the Commission who were present?

A. Now, to the best of my knowledge, and I might be wrong, but to the best of my knowledge, I don't think I was present for that news conference.

Q. I see, sir. So that your news coverage consisted of attending the various proceedings, the Commission proceedings and the Court proceedings and in interviewing people who were involved, so to speak, in the various matters considered by the Commission and by the Court.

A. Some of those involved, yes.

Q. I believe there were also photographs in some of the stories that The Times carried about these matters, were there not?

A. I don't really recall.

Q. You don't recall that. Who, on the assumption that there were such pictures—for example, on the assumption that in The New York Times of January 16, 1959, there was a picture of George Wallace walking up the steps of the Federal Court Building with his attorney. Who would have arranged for such a picture? Would you?

A. I tell you—

[fol. 516] Mr. Embry: We objected to the question then and we renew our objection now, Your Honor, because it is an assumption and there is no predicate laid as a matter of fact—

Mr. Nachman: Well, skip down to line 13 on page 32.

By Mr. M. R. Nachman, Jr.:
(Continues reading from deposition)

Q. Now, to ask the question again, I will call your attention to a story which was under your by-line, one that appeared in the January 14, 1959 issue, which carried a picture of George Wallace. Do you recall that story and that picture?

A. If you had the picture—

Q. It was a story with a Clayton date line.

A. You said before—is this a different—

Q. I'm referring to a different picture. You said you were not there. You were on vacation.

A. I said to the best of my knowledge I wasn't there. I could refresh my memory on those dates if it's very important.

Q. I understand you to—

A. I'm not sure because part of that time Porter was there. At least, I heard he was there. I was on vacation.

Q. For that reason I'm referring to another that might refresh your memory.

A. This is a picture at Clayton?

Q. This was a picture of George Wallace which appeared in a news story with your by-line under the date of January 14, 1959 with a Clayton, Alabama dateline.

A. Yes.

Q. Now, who would have arranged for that picture to have accompanied the news story?

A. It probably—

Mr. Baker: Mr. Daly said, "Who would have arranged for the taking of the picture?" We go down to line 22, I think.

Mr. Nachman: Yes. Line 22, page 33.

[fol. 517] By Mr. M. B. Nachman, Jr.:

(Continues reading from deposition)

A. Off the record. I don't want to say anything about that picture without seeing something on it. In a thing like that—that was a long drawn-out proceeding and I would rather not say. If you've got a copy of the picture, I'll be glad to tell you the best of my knowledge what I know about it.

Q. Let me ask you this way. Is it from time to time customary for you to decide that a picture should go along with a news story?

A. No.

Q. Who makes that decision?

A. It's made in New York to the best of my knowledge.

Q. How do the people in New York get the picture?

A. Well, I think they get it from AP Wire Photo or UP Telephoto.

Q. At no time in your experience has it entered your mind you should have a picture to go along with a news story to send in to New York for publication?

A. It's possible, but I don't—I wish you had a copy of this picture and then I could tell you.

Q. Referring to the March 6 incident in Montgomery, March 6, 1960—

A. Yes.

Q. There was a picture accompanying that story, was there not?

A. I believe there was, yes.

Q. Did you have anything to do with arranging for that picture to go into the Times?

A. No.

Q. It did not occur to you at that time that a picture

along with the story might be newsworthy and might be an event which The New York Times would want a picture with?

A. I try to avoid getting the pictures in—it cuts down on the amount of space I get.

Mr. Nachman: We will skip down to line 18 on page 35 now.

[fol. 518] By Mr. M. R. Nachman, Jr.:
(Continues reading from deposition)

Q. The question I was asking, Mr. Sitton, was, during your experience as a newspaper reporter for The New York Times have there been occasions when you were covering a news story when it occurred to you that it might be well for a picture to go along with the news story and if it did so occur to you, what arrangements, if any, do you make to get such pictures?

A. General practice, no.

Q. You have never done that?

A. I'm not—you said general practice.

Q. Now, I'm asking whether you have ever done it.

A. I think possibly I have on one or two occasions.

Q. What arrangements did you make on those two occasions?

A. I don't—I'm not really sure. I think once I spoke to someone about—to the AP about a—what we call a Man-In-The-News profile feature and asked them if they happened to have a file picture of the person involved and said something about I imagine— "I think we're interested; I imagine you will hear from New York on it."

Q. Do you ever, in the course of your news coverage, attempt to determine whether the AP has—or any other news service has—taken a picture of the events you're covering?

A. That's possible.

Q. And have you, during the course of your work as a reporter for The Times, ever notified the New York office that there was such a picture in existence which The Times could use if it saw fit?

A. I believe, going back to this other thing, on this

Man-In-The-News I did say "Yes, AP has a picture here, has a file picture, if you want to get it up on the wire."

Q. Do you recall, Mr. Sitton, whether at any time during the course of your coverage of these Civil Rights hearings and their aftermath, so to speak, a biographical sketch of George Wallace was run in The New York Times?

A. Yes.

Q. Did you write the biographical sketch?

[fol. 519] A. Yes.

Q. Am I correct that the existence of such a biographical sketch of a person in the news on the particular day is an indication of the importance which The Times attached to the particular news story?

Mr. Embry: If the Court please, we want to object to this line of testimony beginning here—

The Court: What line are you on?

Mr. Embry: Starting on line 14 at page 37, Your Honor. I would like to state my grounds to the Court.

The Court: Go ahead.

Mr. Embry: He has been going into a line of questioning that doesn't relate to whether or not he was at a place—whether this reporter was at a place or not or when but he generally goes into the question of the fact that a man is in the news as indicating there was an important news story and that appears here and there in the testimony and I thought it well to give Your Honor my thoughts on it at this point because from time to time throughout the deposition he asks similar questions. We don't believe that what he considers a newsworthy event or a newsworthy person has any evidentiary value with respect to activity of the corporation and I would like to just state that to Your Honor now rather than to be interrupting the reading of the deposition throughout.

Mr. Nachman: Your Honor, my theory in asking these questions—

The Court: You are talking about the important—the importance of the story?

Mr. Nachman: Yes, sir. The Times has this column or biographical sketch or whatever it is called entitled "The Man in the News" and as will be brought out here later

on they have only one issue and it is marked in my mind that it indicates that a man in the news from Alabama—if he is the man in the news for that day, it indicates that The Times considers that a relatively important news story and probably more important than the others because they take someone out of that news story and print a biographical [fol. 520] sketch about him in the same edition of the paper and it indicates an importance at the time of these news events in Alabama and, of course, it ties in with their having news gathering facilities in Alabama including a reporter who came in here and wrote the sketch. That's the theory on which we offer it, Your Honor.

Mr. Embry: Well, it still doesn't shed any light one way or the other as to whether or not any activities went on in Alabama.

The Court: Well, I will let it in and give you an exception.

Mr. Embry: We except, Your Honor.

Mr. Nachman: That's gets us down to the answer on line 15 at page 37. Go ahead and read the answer, Mr. Baker.

By Mr. Sam Rice Baker:
(Continues reading of deposition)

A. You mean by—what do you mean by "importance"?

Q. I'll ask it this way and maybe I should ask it over a series of questions. This practice in The Times of running this biographical sketch is of fairly recent origin. By that, I mean within the last two or three years or four years. Isn't that correct?

A. I don't really know.

Q. It is customary only one such biographical sketch appears in the edition for that particular day. Is that correct?

A. Correct.

Q. Am I correct that the selection of a person to appear in such a biographical sketch is an indication of the importance of that person in the news on that particular day?

A. I don't know. I guess maybe the general conclusion—possibly that could be true, but sometimes you will find a man in the news on a story that's way inside the paper and doesn't even start on the front page.

Q. Well, is it on occasion an unimportant news story?

A. Are they what? Unimportant?

Q. Unimportant.

A. I consider all of our stories important.

[fol. 521] Q. Well, relatively unimportant in terms of the other stories which appear in the paper. By the paper, I mean The Times.

A. Generally speaking, it's some—judging from reading the paper, it's based on, and generally they try to have, a man in the news on some person who is—figures rather relatively prominently that day.

Q. I take it—

Mr. Embry: We have the same objection to that, Your Honor, and an exception.

The Court: Yes.

Mr. Nachman: We move to exclude that testimony.

The Court: Overrule.

Mr. Embry: We except.

By Mr. M. B. Nachman, Jr.: (Continues reading from deposition)

Q. I take it—maybe I shouldn't ask this, but you read The Times regularly every day?

A. That's true. Sometimes I miss though.

Q. Do you recall whether The Times covers the swearing in of all the governors in the country or just certain—

A. The inauguration?

Q. The inauguration.

A. No, we don't.

Q. You do, however, cover the inauguration of some of the governors of the states?

A. Oh, I guess we always cover the inauguration of the Governor of New York, but I passed up a number down here. In fact, I've never covered an inauguration.

Q. You have read though in The Times stories covering the inaugurations of governors?

A. Yes.

Q. And your answer, I believe, to my earlier question was that The Times does not cover the inauguration of all of the governors?

A. That's correct.

Q. Now, on what basis does it select its governors inau-
[fol. 522] gurations which it will cover?

A. I have no knowledge of that.

Q. This is not a complicated question. Is it not the answer it considers the inauguration of some governors more important than some?

A. I don't know.

Q. Would you say, as a newspaperman of some stature, that the newsworthiness in terms of The Times' reading public is a criterion?

Mr. Embry: We object to that, if the Court please. I object on the same grounds, Your Honor, in that it cannot shed any light on the activities of the corporation within the State—

The Court: I believe you are going rather far off on that question.

Mr. Nachman: Your Honor, my theory again is that The Times considered—and at this point I would like to state that the story covering the inauguration of Governor Patterson is in evidence already—that the inauguration of the Governor of Alabama is considered so important that they carried a news story and a picture but that it doesn't cover the inauguration of some of the other governors and it is an indication as to how important The Times considered this was to its reading public to have coverage in Alabama and they obviously considered that its readers would be interested in the inauguration of a Governor of Alabama more so than the inauguration of a Governor in another State.

Mr. Embry: Well, conceding, Your Honor, for the sake of argument on this question of relative importance that maybe they considered the inauguration of the Governor of Alabama a matter of extreme and urgent importance, but what possible light could that shed on how much activity the corporation has engaged in—

The Court: I believe that's a little far off. I will give you an exception.

Mr. Nachman: All right, Your Honor. Now, on page 41 we go into the question of the accompaniment of the story

with a picture. Would Your Honor's ruling be the same on that also?

The Court: Yes.

[fol. 523] Mr. Nachman: Then, that takes us down to line 21 on page 41, Mr. Baker. I will continue reading at that point.

By Mr. M. R. Nachman, Jr.: (Continues reading from deposition.)

Q. Now, Mr. Sitton, during the time you have been the Southern correspondent for The Times, would you to the best of your knowledge, give me the names of any other regular Times correspondents who have gone into Alabama and written news stories?

A. From my reading of The Times?

Q. Yes, from your general knowledge.

A. Well, now, I've seen by-lines in The Times in Alabama.

Mr. Embry: I object, Your Honor. His answer shows there that he is not basing it on his knowledge.

The Court: Well I think it might be admissible. I will let it in and give you an exception.

Mr. Embry: We except, Your Honor.

The Court: That might be second hand knowledge—vicarious knowledge. Go ahead.

The Witness: Russell Porter, Harrison Salisbury. I can't recall off-hand any others.

By Mr. M. R. Nachman, Jr.: (Continues reading from deposition.)

Q. How about Wayne Phillips?

A. I heard—I believe I heard in Alabama Phillips covered the Autherine Lucy case but I wasn't down here at the time. I don't know but I heard that.

Q. How about Clarence Dean?

A. It's possible, but not to my knowledge, no.

Q. Gladwin Hill?

A. Gladwin—possible again. You mean since I've been down here?

Q. During the time you've been familiar with The Times' operations.

A. You can—I take it—I think the Autherine Lucy event you're referring to took place in 1956.

Mr. Embry: I want to get my objection in there on the [fol. 524] time element, Your Honor.

The Court: Same ruling.

Mr. Embry: We except.

By Mr. M. R. Nachman, Jr.: (Continues reading from deposition.)

Q. I wasn't referring to any particular events.

A. You're calling names of men, I mean, for example, of Phillips. When did the Autherine Lucy thing take place?

Q. 1956.

A. I didn't come to work for The Times until November, 1958 or October, 1957.

Q. That was not what my question was. What my question was was your knowledge of New York Times correspondents who have gone to Alabama and written news stories about events in Alabama.

A. My personal knowledge?

Q. Personal knowledge either gained by seeing them there or reading their material in The Times.

A. The only stories I have read that I can recall that were covered by other correspondents were those by Russell Porter and Harrison Salisbury.

Q. And you recall seeing none by Wayne Phillips or Gladwin Hill?

A. No, sir.

Q. How about George Barrett?

A. No, sir.

Q. Peter Kihss?

A. No, sir.

Q. John Popham?

A. I think possibly in the clips I've seen stories that had an Alabama date line by Popham.

Q. Edith Evans Asbury?

A. I don't recall, no, sir.

Q. Is there a man named Plann?

A. No.

Q. Do you know a correspondent of The Times by that name?

A. No.

[fol. 525] Q. As best you can estimate it, Mr. Sitton, how frequently have you gone into Alabama during 1960?

A. 1960?

Q. Yes.

A. Four times.

Q. How long have you stayed on those occasions?

A. Time varied. I would have to refresh my memory to give you a—give an estimate. I think the longest period I was there was during that March 6th period. Somewhere in there. I was there, I believe, about three or four days at one time and I left and then I went back and stayed two days, I think, something like that.

Q. Were you there last week in Montgomery?

A. Last week?

Q. Last week.

A. Yes.

Q. Specifically, on Saturday, the 28th of May?

A. No.

Q. What day were you there?

A. Friday.

Q. The 27th of May?

A. Yes.

Q. What was the purpose of that trip?

A. To cover the King trial.

Q. To gather news for the Times about the King trial?

A. Correct.

Q. By the King trial, you're referring to the Martin Luther King trial in Montgomery?

A. That's correct.

Q. What did your news covering activities consist of on that visit?

A. I didn't do anything.

Q. Did you attend the trial?

A. No, sir.

Q. You came to Montgomery and did nothing?

A. That's correct.

[fol. 526] Q. Was that the purpose of your coming to Montgomery, to do nothing?

A. No, sir.
Q. What made you decide to do nothing?

Mr. Embry: We object to that, Your Honor. It calls for a mental conclusion of the witness.
The Witness: Yes—
Mr. Nachman: Well, I believe you finally went ahead and—
Mr. Embry: Well, Your Honor, I don't think I have to object because I think the answer came out anyway.
Mr. Nachman: Well, let's just go ahead at the top of page 46 and start reading at line 1.
The Witness: Well, I was advised that it might be best for me to come back to Atlanta.

By Mr. M. R. Nachman, Jr.: (Continues reading from deposition.)

Q. Who so advised you?
A. Mr. McLeod.
Q. Who is he?
A. Mr. McLeod.

Mr. Baker: Then, Mr. Embry said, "Roderick M. McLeod, Jr., one of my law partners."

By Mr. M. R. Nachman, Jr.: (Continues reading from deposition.)

Q. Do you customarily confer with lawyers when you go into Alabama to write a news story?

Mr. Embry: Well, we had some by-play there, Your Honor, and I made a statement about attempting to get service on him, Your Honor. Let me read what I stated at that time and I will read it for the Record. I said, "We object to that." Mr. Daly was present with me and he is a member of the law firm of Lord, Day and Lord, and Mr. Daly said, "You didn't get service. You were attempting to serve him down there. You people were or someone was."
Mr. Nachman: Then I continued, Your Honor.
The Court: All right. Go ahead.

[fol. 527] By Mr. M. R. Nachman, Jr.: (Continues reading from deposition.)

Q. Do you adopt the statement of your counsel?

A. I'll say this. I understood that an attempt would be made to serve me and I thought it best that I get in touch with Mr. McLeod.

Q. And he instructed you to leave?

A. That's correct—no. He advised me to leave. He didn't instruct me.

Mr. Nachman: Then, Mr. Embry said, "You did leave."

The Witness: I left. He advised me, but he didn't instruct me.

By Mr. M. R. Nachman, Jr.: (Continues reading from deposition.)

Q. In 1959, to the best of your knowledge, how frequently did you come to Alabama to cover news events?

Mr. Embry: I want to object here again on a time element objection, Your Honor.

The Court: All right. Same ruling.

Mr. Embry: We except.

Mr. Nachman: All right. Read the answer at line 1, page 47.

The Witness: Oh, rough approximation, I would say ten or twelve times.

By Mr. M. R. Nachman, Jr.: (Continues reading from deposition.)

Q. And over how long a period of time would those occasions extend? I realize they may vary.

A. I imagine the longest period was on that Civil Rights Commission thing. I don't really recall. I would guess a week. That's a rough guess.

Q. Did—the longest period of time on any one of those two occasions or ten occasions was a week?

A. I think so. It might have been longer. It might have been ten days. But without refreshing my memory, I would say a week or possibly ten days.

[fol. 528] Q. How about 1958? I realize that your recollection may be dim.

A. I think I was there two times, I think. I'm not sure. About twice, I think.

Mr. Embry: I want to object to that again on the time element basis, Your Honor. I didn't have time to object then.

The Court: Same ruling and give you an exception.

Mr. Embry: We except.

By Mr. M. R. Nachman, Jr.: (Continues reading from deposition.)

Q. How about 1957?

A. Well, I didn't—no. I wasn't down here then.

Q. And in 1956 you weren't here then?

A. No.

Q. When did you begin your duties as Southern correspondent for The Times, the date in 1957?

A. May—no. May, 1958, I began my duties as Southern correspondent. I came to work for The Times in October, 1957.

Q. I see. You were not down here at all in 1957?

A. No. I was in New York.

Q. Am I correct that Mr. Popham had your job, so to speak, before you took it over?

A. Yes.

Q. Mr. Popham is now in Chattanooga?

A. General Managing Editor of the Chattanooga Times. Yes.

Mr. Baker: Then, Your Honor, Mr. Daly said, "He's not employed by The New York Times?" And the witness said, "No."

By Mr. M. R. Nachman, Jr.: (Continues reading from deposition.)

Q. I take it that you submitted expense accounts for each one of these trips into Alabama?

A. Yes, sir.

Q. And they were all paid?

A. Yes, sir.

Q. Whom do you submit your expense accounts to when you—

[fol. 529] A. The Auditing Department.

Q. Just generally the Auditing Department or any particular person in the Auditing Department?

A. Well, it's changed. I don't remember the other fellow's name. Harold C. Neuhut.

Q. You send them directly to him or address them to the Auditing Department?

A. Address them to him—Mr. Harold C. Newhut, Auditing Department, 8th Floor, New York Times, and so forth.

Q. Have you conferred with anybody else in Alabama other than Don McKee about being a string correspondent for The Times? By anybody else in Alabama, I mean any other residents in Alabama?

A. You mean asked them if they would be a stringer?

Q. A conversation of similar import to the one you had with McKee.

A. I think I asked Bill McDonald something about a question of a stringer. He had once been a stringer.

Q. Something about a stringer—you mean about—

A. About—

Q. About the names of people?

Q. I might have asked Bill—it's quite possible I asked Bill if he had any ideas or something like that.

Q. Do you happen to know how many string correspondents there are resident in Alabama?

A. Only from your questions. I know—I knew of the existence of one stringer in Birmingham whom I don't know. I never met—never talked to him. Of course, I knew about McKee and then you mentioned one in Mobile. He has never been mentioned to me by anyone before.

Mr. Baker: Then, Your Honor, Mr. Daly said, "You're assuming then, he's a—and the witness said, "I say from what he said, he said."

By Mr. M. R. Nachman, Jr.: (Continues reading from deposition.)

Q. I wasn't asking you to relate what my statements—

A. I'm pointing out you said he was a stringer and I

[fol. 530] assume you're an honest man. So I'm taking your word for it. I guess we've got a stringer in Mobile.

Mr. Nachman: Then, Your Honor, Mr. Daly said, "In other words, you don't know?" Read the answer now.

By Mr. M. B. Nachman, Jr.: (Continues reading from deposition.)

A. I don't know. I've never talked to him. I've never heard of him. I didn't know we had a stringer in Mobile.

Q. Did you know you had one in Birmingham?

A. Yes, but I didn't know him. I never have talked to him.

Q. You have never had any conversation with the stringer in Birmingham?

A. No. No dealings whatsoever.

Q. I take it, then, it's fair to assume that the existence of stringers in Alabama is not important to you in your work?

A. No. It's not really part of my work.

Q. In other words, when you want an Alabama news story, you go in there yourself and get it?

A. Sure. If I'm going to cover a story, yes. I go in and cover it myself.

Q. You don't rely on a stringer?

A. No. I call McKee from time to time.

Q. Approximately how often do you call him?

A. Very seldom.

Q. Could you give us some sort of estimate? I realize it would be imprecise.

A. To ask him for information.

Mr. Embry: Then, Your Honor, I asked him to specify the period of time. I didn't know what period of time they were talking about and I asked him to be specific.

By Mr. M. B. Nachman, Jr.: (Continues reading from deposition.)

Q. Since McKee has been a string correspondent for The Times. I believe you stated you talked to him about it either in late 1958 or early 1959.

A. Oh, roughly, I guess I've called Don—I don't know, [fol. 531] five or six times or something like that.

Q. About the coverage of news events in Alabama, or about the occurrences of news events?

Mr. Embry: I object to that again, on the basis that it is too remote in point of time, Your Honor.

The Court: Overruled.

Mr. Embry: We except, Your Honor.

The Court: Where are we now?

Mr. Baker: We are on page 51 at line 9, Your Honor.

The Court: What line?

Mr. Baker: Line 9, Your Honor.

The Court: Go ahead.

Mr. Nachman: Read the answer.

By Mr. M. R. Nachman, Jr.: (Continues reading from deposition.)

A. Sometimes, I think, once. I believe I called him last week and asked him how long he thought the King trial would go on and what the outlook was. I just talked about it generally with him.

Q. In other words, he helps you keep up with news events in Alabama. Isn't that correct?

A. No.

Q. You don't rely on him at all to keep up with news events in Alabama?

A. I mean he's a friend of mine, you know. I call people on other papers who are not stringers, people I'm friendly with. I consider him more of a friend than a stringer. Take Birmingham, for instance, if I want to know something about Birmingham, I don't call—what's that fellow's name—Chadwick? I've never called Chadwick. I call the people on the newspapers over there.

Q. You frequently then, make calls into Alabama?

A. Not too frequently, no. You asked me before about how Alabama stood as a news state and I said it hadn't been overly newsworthy since I've been down there. There have been some occurrences over there we have covered but many more in Little Rock, Florida, Georgia, Virginia.

[fol. 532] Q. Many more?

A. Many more. Particularly Arkansas. My goodness!

Q. Leaving out Arkansas during the period of the school situation there, have there been many more than the other states?

A. What do you mean by many?

Q. It was your phrase.

A. I would say more. I would say more.

Q. I want to know what you meant by it. You would say what?

A. I would say more, yes, to the best of my knowledge.

Q. In which states would you say there have been more?

A. Arkansas.

Q. You're referring to Arkansas during the school crisis there when the troops went in and so on?

A. No, I wasn't there when the troops went in. That was in 1957.

Q. Well, you mentioned Arkansas then?

A. Yes, sir.

Q. During the school situation?

A. That's correct.

Q. Including the Federal Court hearings and so forth?

A. Yes.

Q. What other state has had more news events than Alabama during this period?

A. I spent much more time in Louisiana than I have in Alabama.

Q. Any other state?

A. I don't know. There we get down on a level—I guess they all run about—about the same—Alabama, Georgia, Florida.

Q. Of course Georgia is where you have your principal office?

A. Yes, but that's—that doesn't mean I give Georgia any more coverage than any other state just because I'm here.

Q. I take it it's a convenient geographical location?

A. Good transportation, communication and that sort of thing.

Q. Who pays for these telephone calls into Alabama? Do you charge them to The Times?

A. Yes, sir.

[fol. 533] Q. Do you have anything to do with obtaining subscriptions to the Times?

A. No, sir.

Q. Do you know anything about The Times microfilm edition, and how it's sold?

A. No, sir.

Q. You know there is such an edition?

A. Yes, sir.

Q. Do you know whether that's handled directly with representatives from New York?

A. I don't really know.

Q. You don't know anything about that? Now, in addition to writing spot news stories, so to speak, you also write news analyses, don't you, for the Sunday editorial supplement of The Times?

A. Yes.

Q. News of the Week?

A. News of the Week in Review.

Q. News of the Week in Review?

A. Yes.

Q. And you have written such analyses which have covered Alabama, have you not?

Mr. Embry: We want to object to that, Your Honor. This has nothing to do with respect to where he has been and what he has done while on duty for or acting on behalf of The New York Times Company within Alabama.

The Court: I will let it in and give you an exception.

Mr. Embry: We except.

Mr. Nachman: We are down to the answer at line 19 on page 54.

By Mr. M. R. Nachman, Jr.: (Continues reading from deposition.)

A. Covered only Alabama?

Q. No, not only Alabama, but Alabama—

A. Written them on the South.

[fol. 534] Q. Which have included Alabama?

A. Sure.

Q. Have you ever written any on Alabama exclusively?

A. I don't recall that I have, no.

Q. Do you recall one on January 18th, 1959 which related to the Civil Rights Commission hearings?

A. Do you have a copy of it?

Mr. Embry: Then, Your Honor, I made a statement and said, "This is the News of the Week in Review?"

Mr. Nachman: Then I said, Your Honor, "Yes, Section Roman IV."

By Mr. M. R. Nachman, Jr.: (Continues reading from deposition.)

A. What this a long piece? What was it?

Q. I asked you whether you recall writing one which appeared in the January 18th—

A. If you've got a copy, I'll be glad to tell you whether I wrote it or not. Offhand—I can go back to the files and check and give you a yes or no on it.

Q. Your testimony is you don't recall whether you did or not?

A. As far as I know, I don't recall. I did—I think I did one that didn't appear in the paper but it was on—I think that was on the South as a whole.

Mr. Nachman: Then, Your Honor, I said, "We have no further questions." Do you want to take over the reading now, Mr. Embry?

Mr. Embry: Yes. I will read from here.

By Mr. T. Eric Embry: (Reading from deposition.)

Q. Your expense accounts which you have been asked about and which I assume have been paid for the period he has spoken of on the occasions you have testified about on which you went into the State of Alabama on the occasions you have told us about, from whence you submit those [fol. 535] pieces of paper reflecting your expenses to New York for payment by them to you?

A. Where do I usually make them up?

Q. Yes.

A. I usually make them out after I get back home.

Q. Here in Atlanta?

A. Here in Atlanta. Yes, sir.

Q. Have you ever resided in the State of Alabama?

A. Yes, sir.

Q. When?

A. From March of 1950 until December 31, 1950.

Q. Since December 31st, 1950, have you ever had a residence in Alabama?

A. No, sir.

Q. Since the May—July, 1958, have you been a resident of the City of Atlanta, since July, 1958?

A. Yes. Of course, I actually moved my family down here in July, 1958. I think I used my mother-in-law's mailing address here in Atlanta since May of 1958. I was moving around, there was so much happening at that time, I didn't stay anywhere.

Q. When did you take up residence in Atlanta on a permanent basis?

A. July, 1958.

Q. Since that time have you continuously—

A. Yes, sir.

Q. Have you maintained your home and resided in Atlanta?

A. Yes, sir.

Mr. Embry: That was all the questions I had to ask.

Mr. Nachman: I will continue to read now.

By Mr. M. R. Nachman, Jr.: (Continues reading from deposition.)

Q. When you have gone to Montgomery on these trips you have described, where do you generally stay?

A. The Jefferson Davis.

Q. You stayed there on all those occasions in Montgomery?

A. Yes, sir.

[fol. 536] Q. And I take it when you went to Clayton and Union Springs you used Montgomery as your base of operation, so to speak?

A. Yes. I stayed—stayed at some motel in a town near Clayton one night and the rest of the time at the Jefferson Davis.

Mr. Nachman: Now, Your Honor, we have the deposition of Mr. Thomas M. Hurley which is considerably shorter. I will continue the reading.

By Mr. M. R. Nachman, Jr.: (Continues reading from deposition.)

Q. Would you state your name for the Record, Mr. Hurley?

A. Thomas M. Hurley.

Q. Where do you live, Mr. Hurley?

A. Atlanta.

Q. Are you employed by The New York Times?

A. No, sir.

Q. Do you have any relationship or business connections with The New York Times?

A. I'm employed by The New York Times Sales, Inc.

Q. The New York Times Sales, Inc.?

A. That's right, sir.

Q. And that's a separate corporation from The New York Times?

A. To the best of my knowledge, it is.

Q. I don't suppose you know who owns the stock of The New York Times Sales, Inc.?

A. No, sir.

Q. What are your duties with The New York Times Sales, Inc.?

A. I'm the manager of the Atlanta office of the New York Times Sales, Inc.

Q. Do you happen to know, limiting it to the Southern Region of the country, whether or not the New York Times Sales has other offices, if any?

A. I really don't know that.

Q. Do you have an office in Alabama in Birmingham?

A. No, sir.

Q. Do you have any employees in Birmingham?

[fol. 537] A. No, sir.

Q. Do you know whether they have offices in any of the Southern states other than Georgia?

A. There is an office in Miami, but I wouldn't know how the thing is set up.

Q. Now, in a general way, what are your duties?

A. I solicit advertising.

Q. Throughout the country or just in certain states?

A. No, sir, in the South.

Q. Is Alabama included?

A. Yes, sir.

Q. And do you go into those states and solicit advertising?

A. Yes, sir. That's right.

Q. And you go into Alabama and solicit advertising?

A. That's right.

Q. Do you solicit advertising for publications generally or just for The New York Times?

A. Just for The New York Times.

Q. And for no other publications?

A. No, sir.

Q. Do you know whether the New York Sales, Inc.—or the New York Times Sales, Inc., anywhere in the United States solicits advertising for any publication other than The New York Times?

A. I don't know.

Q. You know of no reason why the policies differ with regard to your area than it is elsewhere in the country?

A. Well, in one other city, they have a publisher's representative who is not connected at all with The New York Times Sales, Inc. That's Detroit.

Q. Who is the publisher's representative?

A. Sawyer, Ferguson and Walker.

Q. Sawyer, Ferguson and Walker also solicit advertising for The New York Times and other publications?

A. In Detroit.

[fol. 538] Q. In Detroit?

A. Yes, sir.

Q. And nowhere else?

A. That's right.

Q. How long have you been employed in this capacity, Mr. Hurley?

A. I went to work with The New York Times Sales, Inc., on June 8th, 1959.

Q. So just about a year then?

A. That's right.

Q. During that period of time—before I ask that, strike that, please ma'am—would you outline in a general way how you go about soliciting an ad for The New York Times and include in that how the ad, after it's contracted for, is made up and sent in to The Times and so on, the general procedure whereby an ad gets from an advertiser to the paper?

A. Generally speaking, I and other salesmen like me, call on the advertisers and advertising agencies. And again generally speaking, the advertiser places advertising in a publication through an advertising agency and the order contract for such advertising goes from the advertising agency to the publication.

Q. Where is the ad made up, in New York or—

A. The actual ad is made up by the advertising agency for the advertiser and it comes into New York in a place or mat form.

Q. And the mat is made up outside of New York?

A. The original mat.

Mr. Baker: Mr. Daly then said, "Well, it assumes that it's made up outside of New York. It would depend on where the advertising agency is that makes it up." Then the answer was, "It could be." Then, Mr. Embry said, "What we mean is if it's an advertising agency outside of New York." Then, Mr. Daly said, "It would probably be made up outside so that was the objection to the question."

By Mr. M. R. Nachman, Jr.: (Continues reading from deposition.)

Q. Have you, during the period of time you have worked for this company, solicited advertising in Alabama?

[fol. 539] A. Yes.

Mr. Embry: We want to object to that, Your Honor. We object once again of the time element, Your Honor.

The Court: I will let it in and give you an exception.

Mr. Embry: We except.

By Mr. M. R. Nachman, Jr.: (Continues reading from deposition.)

Q. Would you state how a particular ad that you select, any one at random you have solicited successfully, how—trace the procedure from the time you solicit the ad until the time it gets to The New York Times? As I say, select any one as an example. Just a typical example.

A. Well, the Birmingham Committee of One Hundred, for example, the ad is made up by the Sparrow Advertising Agency.

Q. In Birmingham?

A. That's right.

Q. In other words, you solicit The Committee of One Hundred?

A. And the agency.

Q. And the agency?

A. The agency in most cases will—will make up the schedule and decide on which publication the ad will go into subject to the approval of the advertiser.

Q. Do you go first to a representative, let's say, of The Committee of One Hundred, whoever has authority to place advertising for this committee?

A. Not necessarily. I might go to the agency first. In this particular case, I didn't see anybody on The Committee of One Hundred for this purpose.

Q. You go to the agency, Sparrow, and you speak to the agency—

Mr. Embry: Then, Your Honor, I interrupted and I said, "Just a minute! You nodded in the affirmative. Let me instruct you, Mr. Hurley, she is having to look at what she's writing and you will have to actually give an answer rather than nod so the Record will show what the answer was."

[fol. 540] By Mr. M. R. Nachman, Jr.: (Continues reading from deposition.)

Q. You go call on the agency?

A. I go to both.

Q. You go to both. Sometimes you go directly to the advertiser?

A. That's right.

Q. Let's take that as an example. You go directly to the

advertiser and, I take it, discuss that person's advertising in The Times?

A. That's right.

Q. Then, on the assumption that you work out some sort of agreement about it, how is the agreement formalized?

Mr. Embry: We objected to that then and we do now on the grounds that it doesn't call for any relation as to an actual transaction or an actual event, Your Honor.

The Court: Overruled. I will let it in.

Mr. Embry: We except.

By Mr. M. R. Nachman, Jr.: (Continues reading from deposition.)

Q. Let's assume that after such a conversation the advertiser agrees with you he should place an ad in The New York Times. What is the procedure from that point on? Do you make any sort of a contract with him?

A. I personally don't. No.

Q. Does The New York Times Sales, Inc.?

A. I wouldn't know. The order and contract is sent from the agency to New York. It's accepted or rejected.

Q. After you have talked to such a person and it has been decided that this person will place an ad in The Times, what is your next procedure?

A. Well, if they have agreed to put an ad in The Times, I don't do anything else.

Q. Do you notify anybody or does the advertiser notify anybody that such a decision has been made?

A. I report my activities to The New York office.

Q. In the course of your activities, do you agree with the advertiser on the amount of space he will take?

[fol. 541] A. He plans a certain schedule. It might be one ad or might be one a month for six months or something like that.

Q. Does he work out with you that plan?

A. Yes, in some cases.

Q. And, I take it, discusses whether it will be one ad or a series of ads?

A. That's right.

Q. And if a series of ads, at what intervals?

A. That's right.

Q. And over what period of time?

A. That's right.

Q. And do you also discuss whether it will go in a daily issue of The Times or a Sunday issue?

A. Yes, sir.

Q. And if the daily issue, which day?

A. Correct.

Q. Do you discuss the amount of space it will occupy?

A. That's right.

Q. And, I take it, some ads are—maybe I'm incorrect about this—are some ads more expensive than others in terms of their format—that is, is an ad with a drawing or illustration more expensive than an ad with just words in it?

A. No, sir.

Q. That doesn't make any difference?

A. No, sir.

Q. Do you have any discussion about the format of the ad that will go in?

A. No, sir.

Q. That's left to someone other than yourself?

A. I just sell the space only. I have nothing to do with the makeup or the content of the ad.

Q. Do you have with you any display samples or display materials which you show the prospective advertiser?

A. With me now?

[fol. 542] Q. Not now. When you go on a trip to visit—

A. Yes, sir.

Q. And you show him various ads?

A. No, I don't show him ads. I might on some occasions, depending on what we're trying to do. Mostly, I discuss the—why an advertiser should be in The New York Times, or why I think he should be, in terms of what—the people they want to reach.

Q. I take it you have some familiarity with his business or his endeavor so that you can—

A. That's right.

Q. So that you can explain to him why you think it's important for him to advertise in The Times?

A. That's right.

Q. Do you have any sort of statistics to discuss with him as to the advantages of advertising?

A. Yes, sir.

Q. Mr. Hurley, since you've had this employment with The New York Times Sales, Inc., approximately how many ads have you solicited from the State of Alabama—from the State of Alabama, I mean from persons or firms or corporations or the State itself or any municipality or county?

Mr. Embry: We object to that, Your Honor. He does not specify any period of time. We object to it on our time element objection. We object in that it goes back further in point of time than January—

The Court: I will let it in and give you an exception.

Mr. Embry: We except.

Mr. Nachman: Read the answer beginning at line 14 on page 66, Mr. Baker.

A. Well, as far as number of ads that went in the paper, sometimes an ad gets in the paper that I don't solicit. It's like we call "over the transom". Somebody wants to place an ad and it goes in direct, or an agency I might not even know about.

[fol. 543] Q. I mean you yourself have solicited in the manner you have described?

A. I would say maybe three or four.

Q. Three or four during this year. Did you solicit—

Mr. Embry: Then, Your Honor, I said, "You mean a year from 1959?"

Mr. Nachman: Then I continued, Your Honor.

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. From June 8th, 1959, up to the present time, approximately a year. Were you involved in the solicitation of an ad for the State of Alabama during this time?

A. Yes, sir.

Q. I believe that sold for around $5,200.00, did it not?

A. No, it was less than that.

Q. Do you recall how much it was?

A. Not specifically, no.

Q. Was it a great deal less? By that, I mean more than a thousand dollars less than $5,200.00?

A. Yes, it was less than $5,000.

Q. Was it less than $3,000?

A. No.

Q. More than three and less than five. Do you call on corporations with regard to advertising in the financial section of The Times?

A. Yes, sir.

Q. And do you solicit advertisements there for declaration of dividends—

A. Yes, sir.

Q. Stockholders' meetings and that kind of thing? Does a Mr. Robert Sullivan have any connection with your process?

A. When he's—when he's in the area, he's under my direction actually.

Q. By whom is he employed?

A. I presume he's employed by The New York Times.

Q. As distinguished from The New York Times Sales, Inc.?

A. Yes.

Q. Does he also come into Alabama?

[fol. 544] A. He has been in Alabama once since—

Q. Since your tenure?

A. That's right.

Q. Do you happen to know what the purpose of that visit was and what he did while he was on that visit?

A. Yes, sir. He was in Mobile, Montgomery and Birmingham.

Q. Soliciting advertisements?

A. That's right.

Q. He called on persons there?

A. That's right.

Q. Do you happen to know the approximate date of that trip?

Mr. Embry: We object to that, if the Court please on a time element basis.

The Court: I will let it in and give you an exception.

Mr. Embry: We except, if the Court please.

Mr. Nachman: Read the answer at line 14, page 68.

By Mr. M. R. Nachman, Jr.: (Continues reading from deposition.)

A. The latter part of October, 1959.

Q. What is the contractual relationship, if any, between New York Times Sales, Inc., and the Sparrow Advertising Agency in Birmingham, if you know?

A. What is what, sir?

Q. Is there any contractual relationship or business relationship between The New York Times Sales and Sparrow Advertising Agency in Birmingham?

A. It's just another advertising agency that New York Times Sales, Inc., calls on.

Q. I see. In other words, what you do, if I'm correct, is to call on advertisers and also call on advertising agencies?

A. That's right.

Q. And the purpose of calling on advertising agencies, I take it, is to urge them to get their clients to advertise in The New York Times?

A. That's right.

[fol. 545] Q. I take it that your expenses on these trips are paid by The New York Times Sales, Inc.?

A. That's right.

Q. And do you submit a regular form expense account?

A. Yes.

Q. Their main offices are in New York City?

A. Yes.

Q. Do you recall seeing, within the last two weeks, an ad for the City of Decatur, Alabama?

A. I saw an ad from Decatur on the Housing Authority.

Q. Yes. Were you instrumental in obtaining that ad?

A. No, sir.

Q. Do you happen to know how that was obtained?

A. No, sir.

Q. I may have covered this earlier, Mr. Hurley, but if you don't mind my being repetitive, do you know what the relationship is, the business relationship, between The New York Times Company and The New York Times Sales, Inc.?

A. Not really, no, sir.

Q. But I believe you did testify, didn't you, that the New

York Times Sales, Inc., obtains advertisements solely for The New York Times?

A. In my case.

Mr. Nachman: At this time, Mr. Daly said, "You mean by obtain, solicit?"

By Mr. M. R. Nachman, Jr.: (Continues reading from deposition.)

Q. It doesn't solicit advertising for any other publication than The New York Times?

A. No, sir.

Mr. Embry: At this time I said, "As far as you know?"

By Mr. M. R. Nachman, Jr.: (Continues reading from deposition.)

A. As far as I know.

Q. As far as you know, it doesn't?

[fol. 546] A. From my own operation here, I don't.

Q. You don't. And there is nobody else in this area who does; that is, nobody else connected with New York Times Sales, Inc. employed?

A. I have an assistant and a secretary here in Atlanta.

Q. And their procedure is as yours, namely, to solicit for nobody other than The New York Times?

A. That's right.

Q. So it would be fair to say, then, when you go into Alabama to solicit advertising, you solicit advertising only for The New York Times. Is that correct?

A. That's right.

Mr. Nachman: Then, I said, "I believe that's all."

Mr. Embry: Then I began my examination again.

By Mr. T. Eric Embry: (Reading from deposition.)

Q. Since June 8, 1959, if I understand you correctly, and the reason I'm asking is so I'll be sure I understand you, you have been into the State of Alabama on two occasions. Is that right?

A. Personally, I have been. And my assistant twice. There have been four trips from this office.

Mr. Embry: Does the Record show when this was taken? Is this deposition dated?

Mr. Nachman: Yes, it shows. I think it was June 3rd, 1960.

Mr. Embry: Let the Record show, Your Honor, that it was taken on June 3rd, 1960.

The Court: All right. The Record will so note.

By Mr. T. Eric Embry: (Continues reading from deposition.)

Q. Four separate occasions when any representative of The New York Times Sales, Inc. solicited advertising within the State of Alabama?

A. Yes.

Q. Since June 8th, 1959?

A. If you include Mr. Sullivan's trip, it would be five.

[fol. 547] Q. Five different occasions in the year?

A. Well, just a minute, sir. The office here was opened on July 1st.

Q. All right, since July 1st, 1959?

A. Those two trips by me and two by my assistant and one by Mr. Sullivan.

Q. Have you ever at any time, or has anyone in your office on those occasions you have just testified about, ever made a contract or accepted an order for advertising when you were there soliciting advertising in behalf of your employer, The New York Times Sales, Inc., to be placed in The New York Times?

A. No, sir.

Q. From what place do you submit your expense accounts that you have testified about to your employer, The New York Times Sales, Inc.?

A. From what place?

Q. When do you make them up and send them to New York from?

A. Atlanta.

Q. Atlanta, Georgia?

A. That's right.

Q. Do you reside in the City of Atlanta, Georgia?

A. I do.

Q. How long have you resided continuously in the City of Atlanta, Georgia, maintained your residence here?

A. Since about—

Q. From, and prior to, the present day, June 3rd, 1960, back how far?

A. Until December, 1950.

Q. 1950?

A. Yes, sir.

Q. Have you ever been a resident of the State of Alabama?

A. No, sir.

Mr. Embry: Then, Your Honor, I said, "Thank you."

The Court: Does that finish it?

Mr. Embry: No, Your Honor. I will read Lawyer Gray's examination.

[fol. 548] By Mr. T. Eric Embry: (Continues reading from deposition—Lawyer Gray's examination.)

Q. Mr. Hurley, have you or anyone from your office ever solicited any ads from Reverend Ralph D. Abernathy, one of the defendants in this case?

A. No, sir.

Q. Have you or any person in your office ever solicited any advertisement from Reverend Fred L. Shuttlesworth, one of the defendants in this case?

A. No, sir.

Q. The same question with reference to a Reverend S. S. Seay, Sr.?

A. No, sir.

Q. The same question with reference to Reverend J. E. Lowery?

A. No, sir.

Q. Will you tell us whether or not either of those named defendants have approached you or anyone in your office to secure space for any type of advertisement to be carried in The New York Times?

A. No, sir.

Q. Do you have any personal knowledge as to how the ad which appeared on Page 25 of The New York Times of March 29, 1960, how it was obtained?

A. No, sir.
Q. Or who obtained it?
A. No, sir.

Mr. Embry: At this time, Your Honor, Lawyer Gray said, "That's all."

Mr. Nachman: Then I continued to ask some more questions, Your Honor.

By Mr. M. R. Nachman, Jr.:
(Continues reading from deposition.)

Q. Just a couple of more questions, Mr. Hurley. You say you went into Alabama, you and your assistant, on four occasions—you twice and he twice?
A. That's right.
Q. How long a period of time were you or your assistant in Alabama on those occasions?
[fol. 549] A. In my case, I was two days one time and five days another; and in his case, he was one day on one occasion and two days on another.
Q. Do you happen to know how long Mr. Sullivan was in Alabama?
A. I would say around, probably a little over a week.
Q. What is the name of your assistant?
A. Mr. Frank Monger.
Q. Now, who, exactly is Mr. Sullivan in terms of his relationship with The New York Times Sales, Inc.?
A. Who is he?
Q. Yes, what relationship does he have with The New York Times Sales, Inc., or The New York Times?
A. He's an advertising representative.
Q. Of the paper?
A. That's right.
Q. And he's employed by the paper itself?
A. I really don't know. I think he is.

New York Times Assignment of Additional Grounds or Objections

Mr. Embry: Under the stipulation and agreements had throughout the hearing on the Motion to Quash in the L. B. Sullivan case wherein it was agreed that counsel for The New York Times Company could assign any additional grounds of objections to questions propounded to the various witnesses and to the introduction of documentary evidence that they saw fit so to do, such stipulation being for the purpose of saving the Court's time on the original hearing, the defendant, The New York Times Company, wishes to and does assign the following additional grounds of objection. To each objection made originally to questions propounded to the witnesses and the introduction of documentary evidence, that the questions called for a mental operation of the witness and not facts and that the questions called for an answer which does not tend to prove or disprove whether Don McKee and John Chadwick were agents of The New York Times Company so that purported service upon McKee would constitute valid service upon this defendant. It does not tend to prove whether or not the Times did business in Alabama or whether the cause of action attempted to be stated in the [fol. 549a] complainant's cause accrued from or was incident to the doing of business or performance of work or service in Alabama by The New York Times Company or its agents, servants or employees and that these same grounds of objection apply to the introduction of the various exhibits offered by the Plaintiff. Further grounds of objection to questions propounded to the various witnesses as well as to the introduction of documentary evidence are that the question and the evidence sought to be adduced by an answer thereto and the documents would not be material or legal evidence such as would authorise a construction by the Court of Section 199 (1) of Title 7, Code of Alabama, 1940, that would permit the Court to assert jurisdiction over the person of The New York Times Company, a corporation, and to admit such evidence for such purpose would be such a misapplication of the law as would deprive this defendant of its property without

due process of law in contravention or violation of the Fourteenth Amendment of the Constitution of the United States and in contravention of Article I, Section 6, of the Constitution of Alabama 1901, and would deny to this defendant equal protection of the law in contravention or violation of the Fourteenth Amendment of the Constitution of The United States and would constitute an abridgement of freedom of the press in contravention or violation of the First Amendment to the Constitution of the United States, taken together with the Fourteenth Amendment of the Constitution of the United States and would impose an unreasonable burden upon Inter-State Commerce in contravention or violation of Article I, Section 8 of the Constitution of the United States and such questions and the evidence sought to be adduced therefrom and such documents would be illegal and immaterial as a basis for the Court construing or holding that Don McKee was an agent of this defendant upon whom service of process might be had so as to support a holding by the Court that any purported service upon him would subject this defendant to the jurisdiction of this Court and the admission of such evidence and the holding on the basis of such evidence that he was an agent so as to subject this defendant to the jurisdiction of this Court, would deprive this defendant of its property without due process of law in violation of the Fourteenth Amendment of the Consti- [fol. 549b] tution of the United States and in violation of Article I, Section 6 of the Constitution of Alabama, 1901, and would deny to this defendant equal protection of the law in violation of the Fourteenth Amendment of the Constitution of the United States and would abridge freedom of the press in violation of the First Amendment to the Constitution of the United States, taken together with the Fourteenth Amendment of the Constitution of the United States and would impose an unreasonable burden upon Inter-State commerce in violation of Article I, Section 8 of the Constitution of the United States.

Mr. Nachman: Then, Your Honor, I said, "That's all." We offer this in evidence, if the Court please.

(Depositions of Claude F. Sitton and Thomas M. Hurley taken before Burma Benny, Notary Public and Deposition Commissioner at 1504 Healey Building, Atlanta, Georgia, Friday, June 3, 1960 in the matter of L. B. Sullivan versus The New York Times Company, a corporation, et al. No. 580 and the exhibit attached thereto, offered and received in evidence and identified as Plaintiff's Exhibit No. 315.)

Mr. Baker: At this time, Your Honor, we want to offer into evidence the records furnished us by The New York Times in response to the subpoena duces tecum calling for [fol. 550] their original records showing the sales of The Index of the Digest of The New York Times in Alabama. Our authority for offering them is the case of Woodstock Iron Company against Reid and Partlow, 84 Ala., 495. In that case the Judge said this, "A subpoena duces tecum was issued and served on the secretary of the defendant corporation requiring him to produce all books and papers belonging to the defendant containing any entries or having any records to the coaling contract between the plaintiffs and the defendant. When the case was first called for trial, the defense counsel stated that a book called the coal delivery book had been overlooked and asked that the case stand over until the next day when they gave assurance that it would be brought into Court. The case was postponed again and called for trial the next morning when plaintiff's counsel called for the book and in response thereto defendant's counsel produced the book and offered it in evidence and delivered it to plaintiff's counsel in open Court. The production of the book under such circumstances as a book belonging to the defendant was an admission that it belonged to and was kept by the defendant having been produced in open Court when called for, it was admissible in evidence without further proof or identification." Now, Your Honor, that fits us like a glove. That was a case in 1887, Your Honor. Now, these were subpoenaed and the defendant went to the Supreme Court of Alabama in an attempt not to produce them. All efforts failed and they were produced and de-

livered to the Court or the Clerk and the Clerk has identified them. They were produced as original correct records and under this case without any further identification—we tried to prove them by the only witness that touched on the subject at all and he denied any knowledge of them. We think we are entitled to offer them in evidence. Having been produced by the defendant it is an admission by them that they are a part of these original records kept in the usual course of business.

Mr. Embry: If the Court please, I listened to his reading of the facts in that case and I think that under the facts in that case there is a distinguishing difference. Apparently from the opinion of the Court in that case there had occurred in the trial of the cause some evidence which [fol. 551] sufficiently identified that which they required by subpoena duces tecum and had asked that someone bring in a witness—now, Your Honor, there has been a distinction in the law of Alabama that I happen to be familiar with with respect to the issuance of a subpoena duces tecum by one party to the other—those documents or other documentary evidence sought to be produced upon notice or motion heard before the Court where the Court ordered it produced. Judge McElroy dealt with this a number of times. They say when you issue a subpoena duces tecum, when you issue that subpoena, it makes the other side—it makes that evidence admissible. In other words, I may have a piece of evidence and he subpoenas me to bring it in and I—

The Court: I understand the question on subpoena duces tecum. He has got to bring the paper to Court and then it is a question of law as to whether it is admissible or not. Is that the point?

Mr. Embry: That's right, Your Honor. There is still that same question of law involved. Besides that—that actually belabors what is before Your Honor. There is no evidence from which these documents could be shown to have any evidentiary value or shed any light on any issue in the case. Aside from their not having been identified, Your Honor, there is no evidence as to which department record they are or what they purport to be and they do

not show on their face what they are supposed to be. We have been all through that a number of times.

The Court: Well, let me see one of them and if I see anything there that I ought not to remember, I will erase it from my mind.

Mr. Baker: They are not a thing in the world, Your Honor, but a group of cards showing the Index was sold and indicated by these separate cards. These are account cards. I might point out that they themselves in direct examination to Mr. McKee brought out the extent and the distribution of The New York Times Index and The New York Times microfilm service in Alabama.

Mr. Embry: Your Honor, Mr. McKee's testimony was [fol. 552] from a financial approach. He testified from the books of finance, the books of accounts as to what the distribution of that thing was and he told them in his cross examination—he told them that they were not records of the Comptroller's office and they were not.

Mr. Baker: There is no question but that they were produced by the defendant pursuant to the motion to produce.

The Court: I think they are admissible. I will let them in and give you an exception to each separate card.

Mr. Embry: All right, Your Honor. We object on the specific grounds that the exhibits numbered—well, they haven't been numbered as yet by the Court Reporter but we would like to object to each one separately and severally being offered in evidence and reserve an exception to the Court's ruling.

The Reporter: They are numbered 316 to 333, sir.

Mr. Embry: We object to the introduction of each one of these separately and severally on the grounds that they have not been identified. They have not been shown to be admissible or to contain evidence that would shed any light on the issue of the defendant corporation doing business in the State of Alabama during a period of time relevant to the inquiry before the Court on the question of whether or not The New York Times Company was doing business in the State of Alabama at or about the time of attempted service in April of 1960 and on the further ground that the records themselves disclosed that these exhibits, Numbered 316 through 333 show on their face

that they cover a period of time extending as far back as 1955. They are incompetent, irrelevant and immaterial with regard to the issues involved in the Motion to Quash. They do not tend to prove or disprove any of the grounds of the motion or to prove or disprove whether or not this defendant is subject to the jurisdiction of the Court in this case.

The Court: I will let them in and you may have an exception.

Mr. Embry: We except to the Court's ruling and to each exhibit separately and severally.

[fol. 553] (Eighteen account cards, pertaining to Index, offered and received in evidence and identified as Plaintiffs' Exhibits 316 through 333, inclusive.)

Mr. Baker: On the same theory and based on the same case, Your Honor, thirteen records—thirteen cards showing the sale to customers in the State of Alabama of microfilm sets of The New York Times.

The Court: Well, that would be the same objections, same ruling and same exception, wouldn't it?

Mr. Embry: Your Honor, we object to each of these exhibits numbered 334 through and including 346 separately and severally on the same grounds assigned to the immediate preceding exhibits just offered into evidence identified as 316 through 333, inclusive. We object to them separately and severally understanding that Your Honor has indicated that he will admit them and we except to the ruling of the Court in so admitting them.

(Thirteen Account Cards pertaining to microfilm, offered and received in evidence and identified as Plaintiff's Exhibits 334 through and including 346.)

Mr. Nachman: Your Honor, a point has been raised about my affidavit, that the affidavit itself does not recite that I was a member of the firm of attorneys signed to the Complaint as attorneys for the Plaintiff and I will ask does the Court take judicial knowledge or should I state that I was a member of the firm of Steiner, Crum and Baker—

[fol. 554] Mr. Baker: Go ahead and take the witness stand. There is another question I want to ask you anyhow.

The Court: I think the Records of the Court will indicate that you were and are a member of the firm.

(Off the Record discussion between counsel.)

PAUL D. FULLER, having been duly sworn, was called as a witness for the Plaintiffs and testified as follows:

Direct examination.

By Mr. Calvin M. Whitesell:

Q. This is Mr. Paul D. Fuller?

A. Yes, sir.

Q. What is your occupation, Mr. Fuller?

A. General Manager of the Montgomery Chamber of Commerce.

Q. Do you live in Montgomery, sir?

A. Yes, sir.

Q. How long have you been Manager of the Chamber of Commerce?

A. For twenty-five years the 1st of next April.

Q. In that position, Mr. Fuller, have you had occasion in the last eighteen months to be contacted by The New York Times or their representative for the solicitation of ads?

Mr. MacLeod: Just a minute, Mr. Fuller, please. I would like a chance to interpose my objection. I object to that question. In the first place, he asked what happened in the last eighteen months and that would be too remote to prove or disprove the question of whether or not the New York Times was doing business in this State on or about April of 1960. In the next place it is objectionable because he asked Mr. Fuller if he had been contacted by an agent or representative—

Mr. Loeb: I believe he used the word "representative".

[fol. 555] Mr. MacLeod: Representative calling on him and that would be a conclusion as to who is a represente-

tive of The New York Times and invades the province of the Court and I believe he could ask the question—

The Court: Well, let's leave out the word agent because that's a question of law. Otherwise, I think the question is good and I give you an exception.

Mr. MacLeod: We except.

The Witness: I have been contacted by representatives of The New York Times both over the telephone and in person.

Mr. MacLeod: I move to exclude the last part of his answer, Your Honor, as not being responsive to the question.

The Court: I will let it in and give you an exception.

Mr. MacLeod: We except.

By Mr. Calvin M. Whitesell: (Continuing)

Q. Are you acquainted with the name of Thomas M. Hurley?

A. Yes. Mr. Hurley has called on me.

Mr. Whitesell: Do you want to object to that, Mr. MacLeod?

Mr. MacLeod: I would like to move to exclude the part of his answer where he said Mr. Hurley called on him as not being responsive to the question.

Mr. Whitesell: I was going to ask him that in the next question—

The Court: I will let it in. If he doesn't connect it up—

Mr. MacLeod: We except.

By Mr. Calvin M. Whitesell: (Continuing)

Q. Has Mr. Hurley called on you?

A. Yes. He called on me and left his card. I was out and he left a note that he would call back and he called back later in the day.

Q. Did you have a conversation—

[fol. 556] Mr. MacLeod: Just a minute. I would like to move to exclude that and I would like a chance to question the witness on Voir Dire for just a minute about that answer if it is all right.

Mr. Baker: Your Honor, we are going to object to his questioning the witness on Voir Dire at this time—.

The Court: Let him go ahead.

By Mr. Roderick M. MacLeod, Jr.:

Q. Do you know of your own knowledge—were you present when some unknown or some unidentified gentleman called at your place of business and left a business card? Were you present at that time?

A. I was not present when he left his card but I was present when he came back—

Q. You didn't see who left the card there, did you?

A. No, I couldn't swear he left it but—

Q. You say someone called you on the phone later?

A. Yes. I had several telephone calls from New York—

Q. Did you recognize the voice of the person who called you over the telephone?

A. No, I did not. He represented himself as from The New York Times—

The Court: Well, now, did I understand you to say that later on in the day somebody came representing some newspaper and talked with you?

The Witness: He came back—

The Court: What newspaper did he say he was from?

The Witness: The New York Times. This man left his card—

The Court: Was it the same man?

The Witness: Yes, I found the card at my office—

The Court: I think that testimony is competent. I will give you an exception.

Mr. MacLeod: We except, Your Honor.

[fol. 567] By Mr. Calvin M. Whitesell: (Continuing)

Q. Mr. Fuller, the man who left his card came back later that day, did he not?

A. Yes, he came back later that day.

Q. And identified himself to you?

A. That's right.

Q. As Thomas Hurley?

A. As Thomas Hurley. Yes, sir.
Q. A representative of The New York Times.
A. Of the New York Times. Yes, sir.
Q. And did he at that time solicit from you advertising for The New York Times?
A. He did.

Mr. MacLeod: Your Honor, I object to the "solicit from him advertising from The New York Times." That calls for a conclusion on the part of the witness—
The Court: I think everybody knows what the word solicit means. I will let it in and give you an exception.
Mr. MacLeod: We except.

By Mr. Calvin M. Whitesell: (Continuing)

Q. Have you at any time from the period January 1st, 1959 to April 1960 had telephone calls by long distance from people who held themselves out as representatives of The New York Times to solicit advertising from you?

Mr. MacLeod: If the Court please, I object to that. In the first place, it calls for a period of time that is too remote and too far removed from the day of purported service in this case to have any bearing on the question of whether or not this defendant was doing business in the State at that time and secondly, it is objectionable because it calls for hearsay testimony and it calls for him to relate what was said in a telephone conversation by someone whom he did not know and the call was placed from the other end of the line to him and he could not possibly know who it was calling and we think it is ob-
[fol. 558] jectionable on that ground.
Mr. Whitesell: Your Honor, I am trying to limit it to the exact period and scope of time that they have placed on this matter—
The Court: Well, I understand that but the fellow could call you up and say that I represent a distillery company or something and you don't know who he is and you have just heard his voice. Is that admissible?
Mr. Whitesell: What I want to know, Your Honor, is did they identify themselves to him—

The Court: Well, supposing the fellow on the other end of the line says, "I'm Governor Patterson, or something like that?" Unless you have got something to connect it up—now, like the fellow with the card where he came back later on in the afternoon or if a man calls up and fifteen minutes later he comes in—

Mr. Whitesell: Did these people identify themselves to you by name, Mr. Fuller?

Mr. MacLeod: Your Honor, I object to that.

The Court: Yes. I sustain the objection. I just don't see how a fellow could call you up on the telephone and say I am so and so and—

Mr. Whitesell: You mean, Your Honor, that if Mr. Thomas Hurley in Atlanta called him and said—

The Court: Well, if he didn't know Thomas Hurley's voice or didn't know anything about him, then I don't see how he could.

By Mr. Calvin M. Whitesell: (Continuing)

Q. Did Mr. Thomas M. Hurley call you?

A. I don't know—

The Court: He said he doesn't know.

The Witness: I don't recall who it was that called me.

By Mr. Calvin M. Whitesell: (Continuing)

Q. Have you received in the mail during the period from January 1st, 1959 to April, 1960 brochures and other mat-
[fol. 559] ters which solicited advertisements from you in the New York Times?

Mr. MacLeod: Your Honor, I object to that first on the grounds that it calls for a period of time too remote to have any relevancy or pertinency or to shed any light on the question of whether this defendant was doing business in the State at the time of the purported service of process. I object on the further ground that anything he received in the mail would not be admissible and have no bearing on the fact as to whether or not The New York Times was doing business in this state and he couldn't have known who sent it from New York.

The Court: Well, to be consistent, I will have to let it in. Let me overrule your objection and give you an exception.

Mr. MacLeod: We except, if the Court please.

Mr. Beddow: Your Honor, may we get in one more ground of objection?

The Court: Go ahead.

Mr. MacLeod: One other ground, Your Honor. Whatever he received in the mail would in itself be the best evidence of what its contents were and what it purported to be.

By Mr. Calvin M. Whitesell: (Continuing)

Q. You can read, can't you, Mr. Fuller?

A. Yes, sir.

Q. Did you read these things that came to you in the mail?

A. Yes, sir.

The Court: Do you have them now?

The Witness: No, sir, I threw them in the waste basket.

Mr. MacLeod: Your Honor, we move to exclude the statement of the witness as not responsive to any question—

The Court: I will let it in and give you an exception.

Mr. MacLeod: We except.

By Mr. Calvin M. Whitesell: (Continuing)

Q. Did you take an ad in The New York Times for the [fol. 560] Chamber of Commerce for the City of Montgomery?

A. I did.

Q. Would you state for the Court when that was?

A. In the latter part of the Folsom administration they had a special Alabama edition in a section of The New York Times.

The Court: What was it about?

The Witness: It was advertising the State of Alabama. We took an ad and as I recall it, it cost us about $400 but it was pretty much on pressure from the State Department—

Mr. MacLeod: Your Honor, I hate to interrupt the witness but all of that is, of course, completely immaterial—

The Court: When did the Folsom administration go out?

The Witness: It went out in January of 1959.

Mr. MacLeod: Your Honor, I move to exclude his testimony. It is testimony of a period of time that too remote from the time of the purported—

The Court: Well, I have been ruling against you on that. Let me let that in and give you an exception.

Mr. MacLeod: We except.

Mr. Whitesell: In the latter part of 1958—

The Witness: I can dig up my files and find out exactly when it was if you want me to.

The Court: Well, we will take judicial notice as to when he went out of office. Go ahead.

By Mr. Calvin M. Whitesell: (Continuing)

Q. Did you pay them for that ad?

A. I did. I paid the advertising agency. I paid the Lynn Advertising Agency.

Q. You paid the Lynn Advertising Agency?

A. Yes, sir.

Q. They placed the ad for you?

A. They placed the ad for us.

Q. Did a representative of The New York Times come [fol. 561] to Montgomery and go over this ad with you in your office?

A. They did.

Q. Prior to the time—

Mr. Beddow: If the Court please—just a minute! I would like the Court to instruct the witness not to answer the questions until we have a chance to put in our objection. I would like Your Honor to instruct him not to answer these questions before we have a change to object—

The Court: Well, he doesn't know whether you are going to object or not but—

Mr. Beddow: Well, we were going to object but he answered the question—

The Court: Well, make your objection.

The Witness: If you were going to object, I wouldn't have answered—

Mr. Beddow: Let's get the Record straight, Your Honor. Will you—

The Court: Well, he will pause until the objection is made.

Mr. Beddow: Your Honor, will you exclude that answer—

The Court: I will exclude the answer and if you want to re-ask it then you may get in your objection.

Mr. Beddow: All right, sir. That's what I wanted.

The Court: Go ahead.

By Mr. Calvin M. Whitesell: (Continuing)

Q. Did a representative of The New York Times come to your office and discuss the placing of that ad that you have discussed placing in the paper with you?

Mr. Beddow: Now, just a minute—

The Court: Yes. Hold up and let Mr. Beddow make his objection.

Mr. MacLeod: Your Honor, we object to that on the [fol. 562] grounds that it is shown by his own testimony that it is too remote on the question of the issues before the Court and secondly, it calls upon him to decide who is a representative of The New York Times and it calls for a conclusion on the part of the witness and invades the province of the Court.

The Court: I will let it in and give you an exception.

Mr. MacLeod: We except.

The Court: Go ahead and answer the question if you can.

The Witness: He did come in my office and discussed the placing of the ad with me and we told him we would handle it through the Lynn Advertising Agency.

By Mr. Calvin M. Whitesell: (Continuing)

Q. And you did so.

A. We did so. Yes, sir.

Q. All right, sir. That's all.

Cross examination.

By Mr. Roderick M. MacLeod, Jr:

Q. Mr. Fuller, let me ask you this. This ad you have talked about was placed in a special Alabama advertising supplement, was it not?

A. A special Alabama supplement, yes.

Q. To refresh your recollection that was sometime about October or November of 1957 when the work was done and the order made, was it not?

A. About 1958.

Q. Isn't it a fact, sir, that that supplement appeared in The Times on February 7th, 1958?

A. I am not just sure in my mind when it was placed but it was sometime in the latter part of 1958.

Q. Did you have an advertising agency representing you on that occasion?

A. I did.

Q. What was the name of that agency?

A. The William R. Lynn Advertising Agency.

Q. Is that located in Montgomery, Alabama?

[fol. 563] A. Yes, sir.

Q. Did you make a payment to the Lynn Advertising Agency for that ad?

A. Yes. They sent us a bill and a copy of the ad and we paid it. We paid it to him and he got his fifteen percent.

Q. You delivered your order for the ad through the Lynn Advertising Agency in Montgomery. Is that correct?

A. We did.

Q. You did not deliver it to a representative or any person who you thought was a representative of The New York Times, did you?

A. We discussed it with a representative of The New York Times—

Q. But you put the order through the Lynn Advertising Agency.

A. Yes. Frankly, we put it through them because he could get fifteen percent on it and he was handling our advertising and it didn't cost us any more and we kept fifteen per cent of it in Montgomery.

Q. All right, sir. That's all.

[fol. 563a] Reporter's and Clerk's Certificates to foregoing transcript (omitted in printing).

[fol. 1683]

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

At Law

Case No. 27416

L. B. SULLIVAN, Plaintiff,

vs.

THE NEW YORK TIMES COMPANY, A Corporation; RALPH D. ABERNATHY, FRED L. SHUTTLESWORTH, S. S. SEAY, SR., and J. E. LOWERY, Defendants.

Transcript of Proceedings on Merits

Before: Hon. Walter B. Jones, Circuit Judge, Presiding, at the Court House, Montgomery, Alabama, Tuesday, November 1, 1960, Wednesday, November 2nd, 1960 and Thursday, November 3rd, 1960.

APPEARANCES:

For the Plaintiff: (L. B. Sullivan)

Messrs. Steiner, Crum & Baker, Attorneys at Law, Montgomery, Ala. By: S. R. Baker, Esq., Robert Steiner, III, Esq., and M. B. Nachman, Jr.

Messrs. Scott, Whitesell & Scott, Attorneys at Law, Montgomery, Ala. By: Calvin M. Whitesell, Esq.

For the Defendant: (The New York Times)

Messrs. Lord, Day & Lord, Attorneys at Law, New York, N. Y. By: Thomas F. Daly, Esq., and Ronald S. Diana, Esq.

Messrs. Beddow, Embry & Beddow, Attorneys at Law, Birmingham, Alabama. By: Roderick Beddow, Esq., T. Eric Embry, Esq., and Roderick M. MacLeod, Esq.

For the Defendants: (Ralph D. Abernathy, Fred L. Shuttlesworth, S. S. Seay, Sr., and J. E. Lowery)

Fred D. Gray, Esq., Montgomery, Alabama; Solomon S. Seay, Jr., Esq., Montgomery, Alabama, and Vernon Z. Crawford, Esq., Mobile, Alabama.

[fol. 1684]

COLLOQUY BETWEEN COURT AND COUNSEL

The Court: What says the Plaintiff in the case of L. B. Sullivan versus The New York Times et al.?

Mr. Nachman: The Plaintiff is ready, Your Honor.

Mr. Embry: We are ready, Your Honor, but we have Plea No. 6 for Your Honor to pass on.

The Court: Were any demurrers filed?

Mr. Nachman: We have filed demurrers to that plea and also the pleas submitted to Your Honor on Friday.

The Court: Let me see the demurrers to refresh my recollection. Was one of them in regard to the New York Practice Act?

Mr. Nachman: Yes, Your Honor.

The Court: I believe the demurrer is good to that one.

Mr. Nachman: The other defendants are pleading in short by consent, Your Honor.

Lawyer Gray: That is correct, Your Honor. We plead in short by consent.

Mr. Embry: Your Honor, we ask to be permitted to examine the jurors for information of counsel under the statute. If the plaintiff doesn't desire to do it, we would like to, Your Honor.

Mr. Nachman: You mean examine the jurors through questions submitted to the Court?

Mr. Embry: I would like to examine them under voir dire, Your Honor, under the statute we have the right—

The Court: Well, let me see them for a minute. Do you have the questions?

Mr. Embry: No, sir. I have just got my notes.

The Court: Are they in shorthand or are they legible? Let me see them for a minute.

Mr. Embry: All right, Your Honor. I don't know whether they will make any sense to you or not though.

Mr. Nachman: Will these questions be asked by the Court or will they be asked by Mr. Embry?

Mr. Embry: Well, I will want to ask the questions—

The Court: I will let the lawyer ask them. It will save [fol. 1685] the Court from doing it.

Mr. Nachman: Well, are you going to examine them as a group or individually—

Mr. Beddow: We would like to challenge them twelve at the time, Your Honor. That will save time, Your Honor.

The Court: All right. Go ahead.

Mr. Nachman: Your Honor, some of these questions we don't think are proper unless Your Honor permits it—

(Off the Record Discussion Between Court and Counsel.)

Mr. Embry: Your Honor, I would like to state in the Record the questions you are not permitting me to ask of the jurors and I will state it for the Record outside the presence of the jury.

The Court: All right. Proceed.

Mr. Nachman: Your Honor, I assume that after Mr. Embry is through that Your Honor is going to qualify the jury with all the usual questions—

The Court: All the usual questions. Yes. I can do that now if you prefer, Mr. Embry.

Mr. Embry: That will be all right, Your Honor. That will get that out of the way first then.

Court's Questions to Qualify the Jury

The Court: Gentlemen of the jury, listen carefully to these questions that I am propounding to you because they are addressed individually to each and every juror in this Court Room. We are about to try the damage suit of L. B. Sullivan of Montgomery versus The New York Times Company, a corporation, Ralph D. Abernathy, Fred L. Shuttlesworth, S. S. Seay, Sr., and J. E. Lowery. Is any member of the jury kin to Mr. Sullivan either by blood or

by marriage? Do any of you work for or own any stock in The New York Times Company, a corporation? The other defendants are Ralph D. Abernathy, Fred Shuttlesworth, S. S. Seay, Sr., and J. E. Lowery. Does any juror work for them or have any connection with them whatsoever? Now, the lawyers in the case are the firm of Steiner, Crum and Baker, Mr. Nachman, Mr. Sam Rice Baker, Mr. Steiner and Calvin Whitesell. The lawyers for the defen- [fol. 1686] dant, The New York Times, are Mr. Roderick Beddow, Mr. Embry, Mr. Thomas Daly of New York, Mr. Diana—

Mr. Nachman: Your Honor, here is a list of the members of the firm of Lord, Day and Lord of New York.

The Court: Yes, gentlemen, are any of you kin to any of these members of the firm of Lord, Day and Lord of New York, Allen Foster, Sherman Baldwin, James S. Hemingway, Herbert Brownell, Louis M. Loeb, Thomas F. Daly, Harry J. Budick, Kenneth E. Ryan, John D. Garrison, Charles W. Merritt, Garrard W. Glenn, Henry C. Blackiston, Franklin B. Lord, Jr., Edmund P. Rogers, Jr., R. Palmer Baker, Jr., Mason G. Kassel, Peter L. Keene and John W. Castles, III? Are any of you kin to any of these lawyers I have named? The lawyers for the other defendants are Fred Gray of Montgomery, Solomon Seay and V. Z. Crawford of Mobile. Do any of you have any connection with these lawyers? Has anyone of you got any opinion about this case whatsoever? All right. I think they are qualified. You may examine on voir dire.

Examination of Jury Panel on Voir Dire

The Court: Do you want to ask your questions of the jurors on this side of the Court Room first and then the other side? Suppose you get this group first and then the other group.

Mr. Embry: That will be all right, Your Honor.

The Court: Gentlemen of the Jury, you twelve on my left here will listen carefully to these questions being propounded to you by counsel for The New York Times. Counsel wants to ask you certain questions here which are permitted by the law of Alabama and I ask you to pay

close attention to them. Gentlemen, this is Mr. Embry, counsel for The New York Times. Go ahead.

Mr. Embry: Gentlemen, these are questions that are not designed to pry into your personal affairs but in selecting a jury an attorney wants to get all of the information he can about prospective jurors. These questions are not designed to embarrass you in any way, but it is merely to gather information so that counsel may intelligently select the jury to try this case. I will address myself to you [fol. 1687] twelve gentlemen first. If there is any affirmative response to any of my questions, gentlemen, just raise your hands and indicate what the information is. Now, gentlemen of the jury, my name is Embry as Judge Jones indicated to you. This young man sitting here by my side is Roderick MacLeod and he is a member of my law firm and Mr. Roderick Beddow and we are law partners and we represent The New York Times Company along with Mr. Tom Daly of New York City of the firm of Lord, Day and Lord of general counsel and Mr. Rod Diana who is an associate of his. Now, representing the plaintiff in this case are the firms of Steiner, Crum and Baker. Now, are either of you gentlemen presently represented by or have you been represented by the firm of Steiner, Crum and Baker or the firm of Scott, Whitesell and Scott in the past?

(Replies inaudible to the Record by unidentified jurors were obtained by Counsel in answer to the above question.)

Mr. Embry: Are either one of you personally acquainted with Mr. L. B. Sullivan, the Plaintiff in this case? Do any of you consider yourself close friends of Mr. Sullivan? Now, gentlemen, this suit that Mr. Sullivan is maintaining here is a suit wherein Mr. Sullivan contends or claims that he was libeled and defamed by an advertisement which appeared in the newspaper, The New York Times, in the issue of March 29th, 1960. I would like to ask whether either of you gentlemen have read that advertisement in The New York Times that Mr. Sullivan complains of in that March 29th issue of The New York Times? Have either of you gentlemen read any news stories in any paper or any publication relating to this litigation growing out of this advertisement of which Mr. Sullivan complains?

(Reply inaudible to the Record by unidentified juror was obtained by Counsel in answer to the above question.)

Mr. Embry: Have either of you gentlemen heard the facts concerning this litigation or the contentions of the [fol. 1688] parties or the contentions being made in the law suit discussed in your presence or has anyone discussed those facts about this law suit or about which this law suit is concerned as contained in this advertisement? Has it been discussed in your presence or has anyone talked to you about it? Now, gentlemen, I would like to ask you this. If the evidence in this case at the close of this case fails to show you that the plaintiff was libeled by this ad of which he complains which you will have before you, would you hesitate for any reason of personal conviction or out of fear or any opinion or sentiment that you have or for any reason whatsoever—would you hesitate to return a verdict in favor of The New York Times at the close of the evidence if the evidence fails to show you that he has been libeled? Would you have any reason or compulsion or any reason whatsoever under those circumstances wherein you would fail to render a verdict in favor of The New York Times? Now, gentlemen, do you have any personal knowledge of the events that purport to be recited in this ad and I direct your attention to those particular events about which there are some recitations in this advertisement concerning a demonstration at the State Capitol in the early part of March or some events that occurred and took place at the Alabama State College?

Mr. Nach[illegible]: If the Court please, if they are going to be asking t[illegible] jurors about the ad, then I think the ad ought to be read to them and not paraphrased by counsel.

Mr. Embry: Your Honor, he is not listening to me. What I asked these gentlemen was whether they had any personal knowledge of these events.

Mr. Nachman: Well, Your Honor, the ad is the basis of the action.

The Court: I will let him ask it and give you an exception to the Court's ruling.

Mr. Embry: Now, gentlemen, when I say personal knowledge, I want to limit that to whether either of you were

present when any of these events took place or whether you have talked to anyone who claimed to have been personally present when these events took place. Now, one of [fol. 1689] you gentlemen has indicated that one of these firms, although not representing you personally, you indicated that they did represent the company for whom you work and I will direct this question to all of you gentlemen if I may. Now, if it is a fact that either of these law firms on the plaintiff's side of the case represents any business with which you are connected or in which you are employed, would that fact embarrass you in sitting on this case and having to return a verdict one way or the other in this case? Has anyone ever spoken to you about the facts in this case or spoken in your presence about the facts of this case? I will ask you if either of you presently hold or have you held a public office either appointive or elective on Montgomery County? Are either of you a member of —I may not have the terminology correct—the Reserve Police in Montgomery or the Reserve Police force or the Citizens' Reserve of the City of Montgomery or are either of you a special deputy sheriff of Montgomery County or do you hold any honorary deputy commission in Montgomery County? Have either of you gentlemen at any time, in the past or the present, have you sold any goods or services or products of any kind to the City of Montgomery in connection with the operation of your business?

(Replies inaudible to the Record by unidentified jurors were obtained by Counsel in answer to the above question.)

Mr. Embry: Are either of you presently or have you been in the past or any member of your family at present or in the past an employee of the City of Montgomery?

(Replies inaudible to the Record by unidentified jurors were obtained by Counsel in answer to the above question.)

Mr. Embry: Now, gentlemen, I want to ask you this general question. Do you have any feeling or sentiment based upon any point of view or position that you under-[fol. 1690] stand or have learned or has been told to you that The New York Times may have assumed or taken that would affect any public matter, political or otherwise,

that would tend to prevent you from returning a verdict in its favor if the evidence fails to disclose that the plaintiff is entitled to a verdict in this case? In other words, what I am asking you, is there any point of view of that newspaper with which you may or may not disagree and in the event that you sit on this case and the fact in the event you did disagree with its position or its point of view in regard to some matter, would that fact prevent you from returning a verdict in its favor in the event that the evidence fails to disclose that Mr. Sullivan is entitled to a verdict? Have you gained any knowledge or any information from any source upon which you have formed a judgment or an opinion which would prevent you from returning a verdict in favor of The New York Times in the event that the evidence shows you that they would be entitled to a verdict? Now, gentlemen, this is my last question. Are either of you gentlemen personally acquainted with either of these witnesses subpoenaed in behalf of the plaintiff in this case?

(Replies inaudible to the Record by unidentified jurors were obtained by Counsel in answer to the above question.)

(Questions on Voir Dire Propounded to Second Group of Jurors.)

Mr. Embry: Gentlemen, these questions I am going to ask you are not questions that are directed to you in an attempt to embarrass you or to probe into your private lives. I am merely trying to get information for my use in attempting to select a jury. Are either of you gentlemen represented by the firm of Steiner, Crum and Baker or, the firm of Scott, Whitesell and Scott? If I may, I will address myself to both groups of jurors. Have you as an individual or have either of you gentlemen of the jury or as an employer or a business with which you are connected been represented by the firm of Steiner, Crum and [fol. 1691] Baker?

(Replies inaudible to the Record by unidentified jurors were obtained by Counsel in answer to the above question.)

Mr. Embry: Are either of you gentlemen personally acquainted with Mr. L. B. Sullivan, the plaintiff in this case?

(Replies inaudible to the Record by unidentified jurors were obtained by Counsel in answer to the above question.)

Mr. Embry: Now, have either of you gentlemen read this advertisement that is the basis of Mr. Sullivan's Complaint and about which he is maintaining this law suit which was run in the March 29th issue of The New York Times newspaper? Have either of you gentlemen read that ad? Have you read any news comment, news stories or anything that purported to relate to what that ad contained or what it was about in any other publication, either local newspaper or magazine or some other media, either television or radio?

(Replies inaudible to the Record by unidentified jurors were obtained by Counsel in answer to the above question.)

Mr. Embry: Have either of you gentlemen read anything about it anywhere but in The Advertiser? Have either of you gentlemen heard the facts or what purported to be the facts about which this law suit is brought and maintained discussed by anyone or has anyone else discussed these facts or purported facts in your presence at any time? Gentlemen, at the close of this case, if the evidence fails to show you that the plaintiff has been libeled by this advertisement, is there any reason that you would hesitate to return a verdict in favor of The New York Times in that event? Do you have any personal knowledge either by having been present or having someone tell you who claimed to have been present about the events or occur-[fol. 1692] rences that took place in the early part of March in and around the Capitol with some students from this Alabama State College and also an event or occurrence which took place out at this Alabama State College campus? Were any of you gentlemen present on either of those occasions or has anybody talked to you about what happened who claimed to have been present when any of these demonstrations took place?

(A reply inaudible to the Record by an unidentified juror was obtained by Counsel in answer to the above question.)

Mr. Embry: Would the fact that two or three of you gentlemen indicated to me that one or the other of the

plaintiff's law firms represents some company with which you have a business connection—in that event, would there be any embarrassment occasioned to you by having to sit on this case by the fact that this firm of lawyers of Steiner, Crum and Baker and Scott, Whitesell and Scott may represent some business with which you have a connection? Would you be embarrassed to have to sit on a case under those circumstances? Has anyone spoken to you directly about this case or about anything concerning this case? Do either of you gentlemen hold a public office either by appointment or election now or have you in the past?

(A reply inaudible to the Record by an unidentified juror was obtained by Counsel in answer to the above question.)

Mr. Embry: Are either of you a member of the Reserve Police of Montgomery or either of you a special deputy sheriff of Montgomery County or hold an honorary Commission as a special deputy?

(A reply inaudible to the Record by an unidentified juror was obtained by Counsel in answer to the above question.)

[fol. 1693] Mr. Embry: Do either of you gentlemen now have or have you had a contract with the City of Montgomery or have you in the past sold any goods or furnished any services or do you presently sell any goods or furnish any services to the City of Montgomery in connection with your business?

(Replies inaudible to the Record by unidentified jurors were obtained by Counsel in answer to the above question.)

Mr. Embry: Are either of you or any member of your family employees of the City of Montgomery presently or have you been in the past? Gentlemen, do either of you have any opinion, judgment or sentiment which you have formed or based upon on what you conceive to be a point of view of The New York Times about any public matter, political or otherwise, about some position they have taken about any public or political matter that would tend to prevent you from rendering a verdict in its favor if the evidence fails to show that Mr. Sullivan is entitled to a verdict otherwise? Have you read anything in the local

press or any other publication, local or national, either newspaper or magazine which has caused you to form a judgment or opinion about The New York Times or about the merits of this case with Mr. Sullivan? Have you gained any information of any kind from any source upon which you have formed an opinion or feeling or sentiment which would tend to prevent you from returning a verdict in favor of The New York Times in this case? Are either of you gentlemen presently acquainted with Dr. Frank Stewart, the State Superintendent of Education or Willie B. Painter, who is with the State Department of Public Safety?

(A reply inaudible to the Record by an unidentified juror was obtained by counsel in answer to the above question.)

[fol. 1694] Mr. Embry: Or William McDonald with The Montgomery Advertiser?

(A reply inaudible to the Record by an unidentified juror was obtained by Counsel in answer to the above question.)

Mr. Embry: Mr. Charles Moore of The Montgomery Advertiser? Are any of you acquainted with him? Harry Kaminsky? Are any of you acquainted with him? How about Billy Parks who operates a gasoline business?

(Replies inaudible to the Record by unidentified jurors were obtained by Counsel in answer to the above question.)

Mr. Embry: All right. Thank you very much, gentlemen.

The Court: All right, proceed, gentlemen.

Mr. Embry: Your Honor, may we state these questions into the Record outside of the presence of the jury that Your Honor has not permitted us to ask so that we may get a ruling on them?

The Court: Gentlemen of the jury, we will recess for ten minutes at this time.

(The following was dictated into the Record by Mr. Embry of Counsel for The New York Times Outside the Presence of the Jury.)

Mr. Embry: Mr. Reporter, let the Record show that these are the questions which the Court has indicated it would

not permit counsel for The New York Times to propound to the jurors in an examination of the jurors on Voir Dire under the statute for information of counsel concerning matters that might affect their interest in the case. I believe it is covered by Title 30 of the Code of Alabama, 1940, Section 52. This is the first question. No. 1. I will ask you gentlemen even though at the close of this case that you [fol. 1695] may find a certain statement contained in the advertisement made the basis of the plaintiff's complaint in this case in his cause of action are not accurate or correct but the evidence discloses that the advertisement did not refer to the plaintiff, do you entertain any conviction, opinion or pre-disposition of mind which would compel you to return a verdict in favor of the plaintiff or which would prevent your returning a verdict in favor of the defendant, The New York Times Company, a corporation? No. 2. Have any of you gentlemen ever been a plaintiff in a law suit in this Court any number of times, that is to say, have you filed a suit seeking recovery of money from another person, firm or corporation? No. 3. I will ask you gentlemen if at the close of the evidence in this case and the evidence shows that The New York Times Company was not actuated by malice in publishing this paid advertisement, would you refuse to award damages to punish The New York Times, that is to say, would you refuse to award punitive damages in this case? No. 4. Is there any reason, without disclosing that reason to me, that would tend to embarrass you or embarrass you in any way or cause you to hesitate to return a verdict in favor of The New York Times Company, a corporation, in this case? Now, those are the questions I wanted to ask and the Court would not permit me to ask.

Lawyer Gray: Let the Record show that the attorneys for the other defendants adopt the same objection to the Court's ruling on these questions and we reserve separately an exception. We except to the Court's denying and refusing to permit the jurors to be questioned with reference to the first item hereinabove referred to by the attorneys for The New York Times.

Mr. Embry: Mr. Reporter, let the Record show that the Court has denied us permission to ask these questions and we note an exception for the Record.

Lawyer Gray: We note an exception for the Record also.

[fol. 1696] (At This Point, Opening Statements Were Presented to the Jury)

[fol. 1697]

COLLOQUY RE AND INTRODUCTION OF EXHIBITS

Mr. Nachman: If the Court please, we would like to introduce this ad and we want to let Mr. Whitesell read it into evidence, if the Court please. If it is agreeable with counsel we will just introduce this one page No. 25 which is the March 29th, 1960, issue of The New York Times and we ask that the Reporter identify it as Plaintiff's Exhibit No. 347.

(Page 25 of the Tuesday, March 29th, 1960 issue of The New York Times being an ad entitled "Heed Their Rising Voices," offered and received in evidence and identified as Plaintiff's Exhibit No. 347.)

Mr. Whitesell: I will stand right here facing the jury while I read it, if the Court please.

The Court: Go ahead.

Mr. Whitesell: The ad is entitled, "Heed Their Rising Voices." It is the Tuesday, March 29th, 1960 issue of The New York Times, page 25 and in the upper right hand corner it says, "The growing movement of peaceful mass demonstrations by Negroes is something new in the South, something understandable. Let Congress heed their rising voices, for they will be heard." The New York Times editorial Saturday, March 19th, 1960. The ad read as follows: "As the whole world knows by now, thousands of Southern Negro students—

Lawyer Crawford: Your Honor, we would like to object to the reading of that ad unless the counsel who reads it will read what is said and as I recall from reading that ad there is nothing on there that is spelled N-i-g-g-e-r-s. It is spelled N-e-g-r-o and I am sure he is well aware of it and is deliberately—

The Court: Read it just like it is.

Mr. Whitesell: Your Honor, I am.

The Court: You are not interpolating anything?

[fol. 1698] Mr. Whitesell: No, sir, Your Honor.

The Court: Go ahead and read it then.

Mr. Whitesell: He is objecting to the way I pronounce N-e-g-r-o.

The Court: Well, pronounce it—

Mr. Whitesell: I have been pronouncing it that way all my life—

The Court: Go ahead. Proceed.

Mr. Whitesell: The ad reads as follows: "As the whole world knows by now, thousands of Southern Negro students are engaged in widespread non-violent demonstrations in positive affirmation of the right to live in human dignity as guaranteed by the U. S. Constitution and the Bill of Rights. In their efforts to uphold these guarantees, they are being met by an unprecedented wave of terror by those who deny and negate that document which the whole world looks upon as setting the pattern for modern freedom.

In Orangeburg, South Carolina, when 400 students peacefully sought to buy doughnuts and coffee at lunch counters in the business district, they were forcibly ejected, tear-gassed, soaked to the skin in freezing weather with fire hoses, arrested en masse and herded into an open barbed-wire stockade to stand for hours in the bitter cold.

In Montgomery, Alabama, after students sang "My Country, 'Tis of Thee" on the State Capitol steps, their leaders were expelled from school, and truckloads of police armed with shotguns and tear-gas ringed the Alabama State College Campus. When the entire student body protested to state authorities by refusing to re-register, their dining hall was padlocked in an attempt to starve them into submission.

In Tallahassee, Atlanta, Nashville, Savannah, Greensboro, Memphis, Richmond, Charlotte, and a host of other cities in the South, young American teen-agers, in face of the entire weight of official state apparatus and police power, have boldly stepped forth as protagonists of democracy. Their courage and amazing restraint have inspired millions and given a new dignity to the cause of freedom.

[fol. 1699] Small wonder that the Southern violators of the Constitution fear this new, non-violent brand of free-

dom fighter even as they fear the upswelling right-to-vote movement. Small wonder that they are determined to destroy the one man who, more than any other, symbolizes the new spirit now sweeping the South—the Rev. Dr. Martin Luther King, Jr., world famous leader of the Montgomery Bus Protest. For it is his doctrine of non-violence which has inspired and guided the students in their widening wave of sit-ins; and it is this same Dr. King who founded and is president of the Southern Christian Leadership Conference—the organization which is spearheading the surging right-to-vote movement. Under Dr. King's direction the Leadership Conference conducts Student Workshops and Seminars in the philosophy and technique of non-violent resistance.

Again and again the Southern violators have answered Dr. King's peaceful protests with intimidation and violence. They have bombed his home almost killing his wife and child. They have assaulted his person. They have arrested him seven times—for "speeding," "loitering" and similar "offenses." And now they have charged him with "perjury"—a felony under which they could imprison him for ten years. Obviously, their real purpose is to remove him physically as the leader to whom the students and millions of others—look for guidance and support, and thereby to intimidate all leaders who may rise in the South. Their strategy is to behead this affirmative movement, and thus to demoralize Negro Americans and weaken their will to struggle. The defense of Martin Luther King, spiritual leader of the student sit-in movement, clearly, therefore, is an integral part of the total struggle for freedom in the South.

Decent-minded Americans cannot help but applaud the creative daring of the students and the quiet heroism of Dr. King. But this is one of those moments in the stormy history of Freedom when men and women of good will must do more than applaud the rising-to-glory of others. The America whose good name hangs in the balance before a watchful world, the America whose heritage of Liberty these Southern Upholders of the Constitution are defending, is our America as well as theirs.

[fol. 1700] We must heed their rising voices—yes—but we must add our own.

We must extend ourselves above and beyond moral support and render the material help so urgently needed by those who are taking the risks, facing jail, and even death in a glorious re-affirmation of our Constitution and its Bill of Rights.

We urge you to join hands with our fellow Americans in the South by supporting, with your dollars, this Combined Appeal for all three needs—the defense of Martin Luther King—the support of the embattled students—and the struggle for the right-to-vote." Beneath that it says, "Your Help is Urgently Needed Now!" Beneath that there appears an entire list of signatures.

Lawyer Gray: Your Honor, we object to that. There is no list of signatures on the ad. They are printed names.

Mr. Whitesell: That's right. They are printed names then.

The Court: Read what is printed on there.

Mr. Whitesell: All right, Your Honor. They read as follows: "Stella Adler, Raymond Pace Alexander, Harry Van Arsdale, Harry Belafonte, Julie Belafonte, Dr. Algernon Black, Marc Blitztein, William Branch, Marlon Brando, Mrs. Ralph Bunche, Diahann Carroll, Dr. Alan Knight Chalmers, Richard Coe, Nat King Cole, Cheryl Crawford, Dorothy Dandridge, Ossie Davis, Sammy Davis, Jr., Ruby Dee, Dr. Philip Elliott, Dr. Harry Emerson Fosdick, Anthony Franciosa, Lorraine Hansbury, Rev. Donald Harrington, Nat Hentoff, James Hicks, Mary Hinkson, Van Heflin, Langston Hughes, Morris Iushewitz, Mahalia Jackson, Mordecai Johnson, John Killens, Eartha Kitt, Rabbi Edward Klein, Hope Lange, John Lewis, Viveca Lindfors, Carl Murphy, Don Murray, John Murray, A. J. Muste, Frederick O'Neal, I. Joseph Overton, Clarence Pickett, Shad Polier, Sidney Poitier, A. Philip Randolph, John Raitt, Elmer Rice, Jackie Robinson, Mrs. Eleanor Roosevelt, Bayard Rustin, Robert Ryan, Maureen Stapleton, Frank Silvera, Hope Stevens, George Tabori, Rev. Gardner C. Taylor, Norman Thomas, Kenneth Tynan, Charles White, [fol. 1701] Shelley Winters, Max Youngstein." Directly

below that it says, "We in the south who are struggling daily for dignity and freedom warmly endorse this appeal." Below that there appears a list of names. "Rev. Ralph D. Abernathy, Montgomery, Alabama, Rev. Fred L. Shuttlesworth, Birmingham, Alabama, Rev. Kelley Miller Smith, Nashville, Tennessee, Rev. W. A. Dennis, Chattanooga, Tennessee, Rev. C. K. Steele, Tallahassee, Florida, Rev. Matthew D. McCollom, Orangeburg, South Carolina, Rev. William Holmes Borders, Atlanta, Georgia, Rev. Douglas Moore, Durham, North Carolina, Rev. Wyatt Tee Walker, Petersburg, Virginia, Rev. Walter L. Hamilton, Norfolk, Virginia, I. S. Levy, Columbia, South Carolina, Rev. Martin Luther King, Sr., Atlanta, Georgia, Rev. Henry C. Bunton, Memphis, Tennessee, Rev. S. S. Seay, Sr., Montgomery, Alabama, Rev. Samuel W. Williams, Atlanta, Georgia, Rev. A. L. Davis, New Orleans, Louisiana, Mrs. Katie E. Whickham, New Orleans, Louisiana, Rev. W. H. Hall, Hattiesburg, Mississippi, Rev. J. E. Lowery, Mobile, Alabama, Rev. T. J. Jemison, Baton Rouge, Louisiana." Underneath that appears these words, "COMMITTEE TO DEFEND MARTIN LUTHER KING AND THE STRUGGLE FOR FREEDOM IN THE SOUTH, 312 West 125th Street, New York 27, New York. UNiversity 6-1700" Beneath that it says, "Chairmen: A Philip Randolph, Dr. Gardner C. Taylor; Chairman of Cultural Division: Harry Belafonte, Sidney Poitier; Treasurer: Nat King Cole; Executive Director: Bayard Rustin; Chairmen of Church Division: Father George B. Ford, Rev. Harry Emerson Fosdick, Rev. Thomas Kilgore, Jr., Rabbi Edward E. Klein; Chairman of Labor Division: Morris Iushewitz." Appearing at the bottom right hand column it says, "Please mail this coupon today." Beneath that it says, "Committee to Defend Martin Luther King and The Struggle for Freedom in the South. 312 West 125th Street, New York 27, New York. UNiversity 6-1700. I am enclosing my contribution of $_____ for the work of the Committee. Name _____ _____ Please Print. Address _____ City _____ Zone _____ State _____" In a little box beneath that it says, "I want to help." In another little box it says, "Please send further information." [fol. 1702] Beneath that it says, "Please make checks payable to: Committee to Defend Martin Luther King."

Mr. Nachman: If the Court please, at this time we would like to introduce into evidence the interrogatories and the answers to the interrogatories which we propounded to The New York Times with the exception, of course, of the ones which Your Honor sustained the objections.

Mr. Embry: Might I suggest that the ad which has been introduced be marked as an exhibit?

Mr. Nachman: That has already been done, Mr. Embry. It is Plaintiff's Exhibit No. 347.

Mr. Embry: All right. Now, Your Honor, would you let us look at these interrogatories and see what, if any, objections we have to them?

The Court: Yes. Go ahead.

Mr. Nachman: Gentlemen of the jury, these are questions that we propounded in written form to the defendant, The New York Times Company, a corporation, before this trial began and I am going to read the questions and Mr. Steiner will read the answers aloud that were made to the interrogatories. We will read them aloud. Please state your correct corporate name, address and official position of person who is answering these interrogatories.

Mr. Steiner: The New York Times Company, a corporation; Harding F. Bancroft, 229 West 43rd Street, New York, New York, Secretary of the corporate defendant.

Mr. Nachman: Please state all the details, facts, and circumstances under which the advertisement on which this suit is based came to be printed in the New York Times in the issue of March 29, 1960, on page 25. In answering this question, please give the names, addresses and official position of each and every person who had any connection with the handling of the advertisement and state exactly and in detail what was done by each.

Mr. Steiner: On or about March 25, 1960, one John Murray brought to The New York Times Plant at 229 West [fol. 1703] 43rd Street in the City of New York the original copy from which the advertisement referred to in this question was formed. This copy was delivered to one Gerson Aronson, an employee of this defendant, whose title or position with this defendant is a salesman in the National Advertising Department. Mr. Aronson delivered the original of this copy to this defendant's Production Department

after making a thermafax copy of such copy, which said thermafax copy was placed on the desk of one D. Vincent Redding, who is an employee of this defendant and whose position is that of Manager of this defendant's Advertising Acceptability Department. The Production Department sent the original of such copy to the composing room of this defendant's plant, where some time during the period from about March 25, 1960 to the time of its insertion on March 29, 1960, it was set in type. During this interim of time this defendant's Mr. Redding approved said copy for insertion as a paid advertisement in this defendant's newspaper. This was all done pursuant to what is called an advertising insertion order for this ad by Union Advertising Service of 302 Fifth Avenue, New York, New York. Said Union Advertising Service was billed by this defendant according to the terms and conditions of said insertion order and was paid by said Union Advertising Service for the publication of said advertisement. Mr. D. Vincent Redding, who has been previously identified in the foregoing answers, in checking the advertisement inquired about, ascertained that the same was endorsed by a large group of individuals among whom were persons whose general reputation for truth, integrity and honesty was known to Mr. Redding to be good and on the basis of this he had no reason to believe that anything contained in the ad was false and as the advertisement made no attacks of a personal character upon any individual and otherwise met the advertising acceptability standards promulgated by this defendant he, accordingly, approved it.

Mr. Nachman: Please state exactly and in detail what investigation was made by any persons for and on behalf of The New York Times to determine the correctness of the assertions contained in said advertisement prior to its publication. In answering this question please give the [fol. 1704] name and address of every person who made any investigation for or on behalf of The New York Times and state his connection with The New York Times and state exactly what was done by each such person. Attach to the answers to these interrogatories copies of any written statements that any such person may have made to The New York Times regarding the result of such an investigation.

Mr. Steiner: See last paragraph of preceding answer No. 2. No written statement was made to this defendant regarding that which was done as answered in preceding answer No. 2.

Mr. Nachman: Please state whether or not The New York Times, prior to the publication of the advertisement involved in this suit, carried any news stories in its paper or received in its files any news coverage or reports from news services or other news gathering media concerning any of the events or occurrences referred to in said advertisement, and if you answer affirmatively, please attach to your answers to this interrogatory the original or a true and correct copy of each and every said news story, news account, report, or communication appearing in The New York Times or received by The New York Times or made known to The New York Times prior to the publication of said advertisement on March 29, 1960.

Mr. Steiner: The New York Times, prior to the publication of the advertisement referred to and insofar as this defendant is able to determine from its records, had received from its reporters, string correspondents and the news services to which it subscribes news stories relating to certain of the events or occurrences referred to in the advertisement. These stories appeared in defendant's newspapers on the dates of February 18, 1960, March 2, 3, 5, 6, 7, 8, 9, 10, 11, 12, 13, 23, 27, 30, 1960, and April 1, 1960. The actual news stories are equally within the knowledge of the plaintiff inasmuch as the same were produced by this defendant in response to this plaintiff's motion to produce same and were introduced into evidence in this cause on a hearing of this defendant's motion to quash service of process herein.

[fol. 1705] Mr. Nachman: Please attach to your answer to this interrogatory the original or a true and correct photostatic copy of the documents or document forming the basis of the format from which this advertisement was composed and on which it was based. Please attach to your answer to this interrogatory every document, writing, or authorization from any of the signers of the advertisement authorizing The New York Times to publish their names in said advertisement.

Mr. Steiner: Attached is the copy in this defendant's possession which has been referred to in the preceding answer to interrogatory numbered 2 of the document forming the basis of the format from which this advertisement was composed. In the regular course of business the original of this document was not kept by this defendant and no longer exists as it is not customary on the part of this defendant to keep such documents in its files. The thermafax copy of the authorization for the use of the names attached to said advertisement is attached hereto and likewise the original of such was not kept by this defendant. Exhibits "A" and "B" respectively attached hereto.

Mr. Nachman: Is it agreeable with counsel that we do not at this time read Exhibit "A" as that is the ad and has already been read?

Mr. Embry: That's all right.

Mr. Nachman: Attached to this is the typewritten format which made up the ad which has already been introduced.

Mr. Embry: Well, let the Record show that attached to these answers is a copy of a copy. And there is a typographical error there.

Mr. Nachman: But the content is the same as the ad already introduced into evidence. Go ahead and read Exhibit "B".

Mr. Steiner: This is Exhibit "B". It reads as follows: "A PHILLIP RANDOLPH, 217 West 125th Street, New York 27, N. Y. March 23, 1960.

[fol. 1706] Mr. Jerry Aaronson
New York Times
Times Square
New York, New York

Dear Mr. Aaronson:

This will certify that the names included on the enclosed list are all signed members of the Committee to Defend Martin Luther King and the Struggle for Freedom in the South. Please be assured that they have all given me permission to use their names in furthering the work of our Committee.

Sincerely,

A. Philip Randolph, Chairman"

Lawyer Gray: Your Honor, I would like to see that letter before we proceed.

Mr. Nachman: Here it is.

Lawyer Gray: Your Honor, we would like the Record to show and for the jury to understand that the letter refers to Exhibit "B" which says, "This will certify that the names included on the enclosed list are all signed members of the Committee to Defend Martin Luther King and the Struggle for Freedom in the South." I would like the jury to know that that is simply a list of names here similar to that which appears on the ad and this list is not signed just as the ad is not signed.

The Court: All right. Go ahead, Mr. Nachman.

Mr. Nachman: Did the New York Times receive from the plaintiff a demand for retraction, by letter dated April 8, 1960? If you answer affirmatively, please attach the original or a true and correct copy of said demand for retraction.

Mr. Steiner: Yes. This defendant did receive from plaintiff a demand for retraction by letter dated April 7, 1960, a copy of which is attached hereto as Exhibit "C".

Mr. Nachman: Read Exhibit "C".

Mr. Steiner: This is Exhibit "C" and it is on City of Montgomery stationery. It is dated March 8th, 1960 and is addressed to New York Times Company, Times Building, [fol. 1707] 229 West 43rd Street, New York, New York. It reads as follows: "Gentlemen: You will hereby take notice that under and by virtue of the laws of Alabama, I demand that you publish a retraction of certain false and defamatory matter published by you in the New York Times of Tuesday, March 29, 1960, on page 25, published under the heading, "Heed Their Rising Voices," and particularly the following false and defamatory matter therein contained,

"In Montgomery, Alabama, after students sang 'My Country 'Tis of Thee' on the State Capitol steps, their leaders expelled from school, and truckloads of police armed with shotguns and tear-gas ringed the Alabama State College campus. When the entire student body protested to state authorities by refusing to re-register, their dining hall was padlocked in an attempt to starve them into submission."

"Again and again the Southern violators have answered Dr. King's peaceful protests with intimidation and violence. They have bombed his home almost killing his wife and child. They have assaulted his person. They have arrested him seven times—for 'speeding', 'loitering' and similar 'Offenses'. And now they have charged him with 'perjury'—a felony under which they could imprison him for ten years."

The foregoing matter, and the publication as a whole, charge me with grave misconduct and of improper actions and omissions as an official of the City of Montgomery.

I further demand that you publish in as prominent and as public a manner as the foregoing false and defamatory material contained in the foregoing publication, a full and fair retraction of the entire false and defamatory matter so far as the same relates to me and to my conduct and acts as a public official of the City of Montgomery, Alabama. Very truly yours, L. B. Sullivan, Commissioner." On the left hand side at the bottom of the letter is the words "Registered Mail, Return Receipt Requested."

Mr. Nachman: Did The New York Times or its attorneys make any reply to said demand for retraction from the plaintiff dated April 8, 1960? If you answer affirmatively, [fol. 1708] please attach a true and correct copy of said reply.

Mr. Steiner: Yes. The attorney for this defendant made reply to said demand, a copy of which is attached hereto as Exhibit "D". This is Exhibit "D". It is dated April 15th, 1960 and addressed to Hon. L. B. Sullivan, Commissioner, City of Montgomery, Montgomery, Alabama. It reads as follows, "Dear Mr. Commissioner: Your letter of April 8 sent by registered mail to The New York Times Company has been referred for attention to us as general counsel. You will appreciate, we feel sure, that the statements to which you object were not made by The New York Times but were contained in an advertisement proffered by The Times by responsible persons. We have been investigating the matter and are somewhat puzzled as to how you think the statements in any way reflect on you. So far, our investigation would seem to indicate that the statements are substantially correct with the sole exception that we

find no justification for the statement that the dining-hall in the State College was "padlocked in an attempt to starve them into submission." We shall continue to look into the subject matter because our client, The New York Times, is always desirous of correcting any statements which appear in its paper and which turn out to be erroneous. In the meanwhile you might, if you desire, let us know in what respect you claim that the statements in the advertisement reflect on you. Very truly yours, Lord, Day and Lord." Blind carbon copies were sent to Mr. Dryfoos, Mr. Garst and Mr. Redding.

Mr. Nachman: After receipt of said demand for retraction from the plaintiff, dated April 8, 1960, did The New York Times make any investigation of the correctness of the statements contained in said advertisement? If you answer affirmatively, please state the name of the person or persons making the investigation, the connection of each with The New York Times, the results of said investigation, and attach to your answers to this interrogatory the originals or true and correct copy of any and all reports, communications, advice, or other writings, informing or apprising you of the results of said investigation.

[fol. 1709] Mr. Steiner: Now, it indicates here that they refused to answer.

Mr. Embry: Hold it just a minute, please. That's all right, Your Honor. We don't object to it.

Mr. Steiner: You want me to read the answer as it is in—

Mr. Embry: Go ahead.

Mr. Steiner: An investigation was made by Messrs. Don McKee and Claude F. Sitton, a stringer and correspondent, respectively, for The New York Times Company. The results of their investigation as embodied in their telegraphic reports are attached to these interrogatories as Exhibits A and B. This is Exhibit "A". There are a lot of telegraphic symbols here that are meaningless to me but it says, "Montgomery, Alabama, April 14, Robert Garst, Assistant Managing Editor, The New York Times, New York." It reads as follows: "Re Info Request: Alabama State College sources are Dr. H. Council Trenholm, President, and Dr. Levi Watkins, Director of the Business Office

which issues meal tickets, controls food and dormitory accommodations. Dr. Ternholm: "Absolutely no truth to the charge that the dining hall was 'padlocked' to 'starve students into submission.' I don't understand through what source, malicious or otherwise, that statement came." "Trenholm further refutes reference to 'Entire student body refusing to re-register,' factually incorrect. Dr. Watkins (Personal Interview and he has Records to back up this): Gave background to situation: Quarter ended on Friday, March 4, pre-registration was Mar. 2-5. Standard procedure for students to register officially with business office by March 10." There were some more telegraphic symbols at this point but this is still Montgomery, Alabama, continued. Under standard rules students required to have meal tickets (actually privilege card for both meals and dorms), which are valid by quarter. Temporary cards issued up through March 9th. No further cards issued except on basis of actual registration." It continues to read as follows: "Meal courtesies were extended to all (repeat all) students through Sunday, March 6." (Two days after Winter quarter ended.) The business office remained open [fol. 1710] all day Saturday and Sunday (March 5 & 6) to enable students to either register or make arrangements for privilege cards." As to "Entire student body" refusing to register as protest, college records show 1,182 of the approximately 1,900 students had pre-registered prior to the quarter's end March 4. On Monday (March 7), first day of the supposed protest, 214 students followed through on registration, on Tuesday, 194 more did so and by Wednesday a total of 803 had taken steps toward permanent registration. Dr. Watkins said emphatically the dining hall was never "padlocked"—except for being locked up at night as usual; no students who wanted meals were refused; those who had no privilege cards could have bought meals." At this point there are more telegraphic symbols but it is still Montgomery, Alabama. "A number of students, who during the week simply stayed on and took no steps to register,—those people didn't eat as far as the dining hall was concerned." (If students don't register, they aren't considered students.) "It is conceivable that some students who for their own reasons did not choose

to re-register or to request temporary campus living accommodations prior to their decision to register, were without college meal service," said Watkins. "The college presumed to serve those students who had actually registered for the quarter or who requested living accommodations, including meal service, which were available with or without the actual payment of fees and tuition prior to the deadline," he continued. There were about seventy-five students who never re-registered but who were given both meal and room privileges, Watkins said. Any number of student witnesses can be produced to prove the falsity of the "padlock" statement, he said. As to the expulsion of students, this was on grounds of their insubordination in refusing to stop demonstrations on orders of Trenholm and other officials—this is the official stand of the college." There are more telegraphic symbols but it is still Montgomery, Alabama. It reads as follows: "As to truckloads of police, and so forth, city police entered the campus only after a mob of students had threatened the building and grounds custodian Negro who tried to prevent an on-campus demonstration on orders of the President. A college police officer fired his [fol. 1711] pistol into the air in an effort to quiet the mob before a passing city patrol car intervened. The police were actually seeing that orders of the officials were carried out. As to King's police record here: Montgomery police files show two arrests on January 26, 1956, he was arrested for speeding, released on bond, convicted and fined ten dollars which he appealed and later paid, and on September 3rd, 1958, he was arrested for loitering, released on his own bond, fined fourteen dollars which was paid by the Police Commissioner. In neither case was he jailed. King has been twice arrested by Montgomery County Sheriff's officer: On February 22nd, 1956, for violation of State Boycott Law, and on February 29th, 1960, on charge of Income Tax Return falsification." There are more telegraphic symbols and it is still Montgomery, Alabama. It reads as follows: "Total of four arrests. As to demonstrations, on Sunday March 6, several hundred Negroes, including some students, attempted march to capitol in direct violation of police warning against it: Police proceeding on basis of preserving order, I.E., averting race riot, well within legal rights.

Contrary to statements, City-County-State Police averted riot and saved lives no doubt of Negroes who at one point appealed to state public safety director for instructions and advice on how to leave the scene. Not one Negro was arrested during near-riot or attempted demonstrations." It is signed, "Don McKee, Montgomery, Alabama." Now, this is Exhibit "B". The address is Atlanta and on the right hand side appears the words, "For Loeb, General Counsel." It reads as follows: "Sitton (telephoned) May 5th. Following is chronology of events in Montgomery, Alabama, surrounding the demonstrations of Alabama State College students: February 25th: Some thirty Alabama State College students sought service at a lunch counter in the Montgomery County Court House. They were refused. February 27th: A large number of students marched from the college campus to the First Baptist Church (Negro) in downtown Montgomery, where they held a prayer meeting and pep rally. February 29th: Governor John Patterson relented somewhat from a position taken in an earlier public statement that all student participants in the February 25 demonstration should be expelled. How-
[fol. 1712] ever, he strongly implied that such action should be taken in the case of the leaders." This is page 2. "March 1st: A thousand students marched from the Alabama State College campus to the State Capitol, where they held a demonstration on the Capitol steps. State officials watched the event. The students said the Lord's prayer in unison and sang the National Anthem before marching back to the campus. March 2: The State Board of Education, of which the Governor is chairman, met and ordered the expulsion of the nine student leaders of the demonstration. March 5: City Police Commissioner L. B. Sullivan announced that no further demonstrations would be tolerated. March 6: Authorities narrowly averted a riot as adult Negroes and a few students sought to march from the Dexter Avenue Baptist Church (Negro) to the Capitol, two blocks away, to hold a prayer meeting on the Capitol steps. The demonstration was designed to protest the expulsion of the nine student leaders. March 7: Alabama State College students stayed away from classes in a strike in sympathy with those expelled. However, virtually all of them returned to

class after a day. Even those expelled were allowed to come back and complete examinations then in progress. March 8: Students met at a church near the campus, held a pep rally and distributed signs and then marched on the campus. The superintendent of grounds ordered them to leave, which they refused to do. There was considerable confusion, with students dancing around the campus in conga lines. Some became rowdy. A campus guard fired his gun into the air several times in an attempt to disperse them and the superintendent of grounds called the police. At this point the students left the campus but as they marched across the street the police arrived and arrested thirty-two of them on charges of disorderly conduct and failing to obey police officers. They were later convicted and fined $200 each and costs. Paragraph 3 of the advertisement, which begins, "In Montgomery, Alabama, after students sang" and so forth, appears to be virtually without any foundation. The students sang the National Anthem. Never at any time did police "ring" the campus although on three occasions they were deployed near the campus in large numbers. Probably a majority of the student body was [fol. 1713] at one time or another involved in the protest but not the "entire student body". I have been unable to find anyone who has heard that the campus dining room was padlocked. Apparently students who refused to attend classes and also to sign a list requesting meal tickets were barred from the dining hall. However, even those taking part in the strike were admitted to the dining hall if they had signed a pre-registration application for the spring quarter or a request for temporary meal tickets. In reference to the 6th paragraph, beginning: "Again and again the Southern violators" and so forth. Dr. King's home was bombed during the bus boycott some four years ago. His wife and child were there but were not (repeat not) injured in any way. King says that the only assault against his person took place when he was arrested some four years ago for loitering outside a courtroom. The arresting officer twisted King's arm behind the minister's back in taking him to be booked. King says he has been arrested only three times in Montgomery—one time on a speeding charge,

one time on a charge of violating the state's anti-boycott law and once for loitering. He was arrested in Atlanta several months ago at the request of Montgomery County authorities on an indictment charging him with two counts of perjury in a state income tax case. Conviction for perjury in Alabama carries a maximum penalty of five years imprisonment. He is, of course, charged with two counts. End—Sitton. 5:02 P. M., May 5."

Mr. Nachman: If you have answered that any investigation was made, please advise whether you received any report, verbally or by telephone or otherwise than in writing, and if you answer affirmatively, please state the substance of said verbal or telephonic reports, including the names of the persons who made the report and their connection with The New York Times.

Mr. Steiner: The report of Claude F. Sitton, attached hereto as Exhibit B, had been previously telephoned to the individual named thereon. The substance of said telephonic report was as appears in Exhibit B.

Mr. Nachman: Did you in response to plaintiff's demand dated April 8, 1960, publish a retraction in your newspaper? [fol. 1714] If you answer affirmatively, please attach the original or a true and correct copy of said retraction.

Mr. Steiner: No.

Mr. Nachman: Did you in response to a demand from any person other than the plaintiff publish a retraction or apology, or anything of a similar nature which had reference to the advertisement involved in this suit? If you answer affirmatively, please attach the original or a true and correct copy of said retraction and state the circumstances under which it was made. Please explain why said retraction was made but no retraction was made on the demand of the plaintiff.

Mr. Steiner: Yes. This defendant published a retraction with reference to the advertisement referred to in this suit in response to a demand from Governor John Patterson of the State of Alabama. It did so although in its judgment no statement in said advertisement referred to John Patterson either personally or as the Governor of the State of Alabama, nor referred to this plaintiff or any of the plaintiffs in the companion suits. The defendant, however, felt

that on account of the fact that John Patterson held the high office of Governor of the State of Alabama and that he apparently believed that he had been libeled by said advertisement in his capacity as Governor of the State of Alabama, the defendant should apologize. A photostatic copy of this retraction is attached hereto as Exhibit "E". The retraction is self explanatory. This is Exhibit "E". It reads as follows: "The advertisement containing the statements to which Governor Patterson objects was received by The Times in the regular course of business from and paid for by a recognized advertising agency in behalf of a group which included among its subscribers well-known citizens. The publication of an advertisement does not constitute a factual news report by The Times nor does it reflect the judgment or the opinion of the editors of The Times. Since publication of the advertisement, The Times made an investigation and consistent with its policy of retracting and correcting any errors or misstatements which may appear in its columns, herewith retracts the two para- [fol. 1715] graphs complained of by the Governor. The New York Times never intended to suggest by the publication of the advertisement that the Honorable John Patterson, either in his capacity as Governor or as *ex officio* Chairman of the Board of Education of the State of Alabama, or otherwise, was guilty of "grave misconduct or improper actions and omissions." To the extent that anyone can fairly conclude from the statements in the advertisement that any such charge was made, The New York Times hereby apologizes to the Honorable John Patterson therefor.

Mr. Nachman: "In Montgomery, Alabama, after students sang, 'My Country, 'Tis of Thee' on the Capitol steps, their leaders were expelled from school, and truckloads of police armed with shotguns and tear gas ringed the Alabama State College campus."

Mr. Embry: Didn't Judge Jones rule that that part should not be asked?

Mr. Nachman: Yes. That's why I skipped the top part.

Mr. Embry: All right. Go ahead.

Mr. Nachman: "When the entire student body protested to state authorities by refusing to re-register, their dining

hall was padlocked in an attempt to starve them into submission. Again and again the Southern violators have answered Dr. King's peaceful protests with intimidation and violence. They have bombed his home almost killing his wife and child. They have assaulted his person. They have arrested him seven times—for 'speeding,' 'loitering' and similar 'offenses.' And now they have charged him with 'perjury'—a *felony* under which they could imprison him for *ten years*." Please state if you contend that any of the foregoing facts, statements, or occurrences are true.

Mr. Embry: Just a minute now.

Mr. Steiner: Shall I read Answer 12 in the Supplemental Answers?

Mr. Nachman: Yes. Go ahead.

Mr. Steiner: All of the knowledge of this defendant with respect to the truth or falsity of the statements contained in the advertisement referred to are contained in the docu- [fol. 1716] ments attached hereto as Exhibits A and B and the news stories previously referred to in this defendant's answer to interrogatory 4 herein. Said hearsay documents and news stories speak for themselves. Defendant reserves the right to supplement its answers to this interrogatory should relevant facts come to its attention between the date of filing hereof and the trial of the pending action.

Mr. Nachman: Please state which of the following departments or offices of The New York Times read, passed upon, or considered in any way the advertisement which is the basis of this suit and which appeared in the March 29, 1960, issue of The New York Times: publication office staff; advertising censorship department; advertising department. Give the names and addresses of the persons in any of these departments or in any other department or office of The New York Times who considered, passed upon, or read this advertisement.

Mr. Steiner: See answer to preceding interrogatory numbered 2.

Mr. Nachman: Please attach as an answer to this interrogatory any written statement of principles or policies of The New York Times in regard to advertising censorship, and specifically attach a true and correct copy of the "New York Times Advertising Index Expurgatory."

Mr. Steiner: We know of no such thing as is called "New York Times Advertising Index Expurgatory". However, we attach hereto the booklet "The New York Times Advertising Acceptability Standards", marked Exhibit "F", which we presume you are seeking. This is exhibit "F". "THE NEW YORK TIMES ADVERTISING ACCEPTABILITY STANDARDS: The New York Times endeavors to exclude misleading, inaccurate and fraudulent advertisements and unfair competitive statements in advertising. The chief purpose of this policy of The Times is to protect the reader and to maintain the high standards of decency and dignity in its advertising columns which The Times has developed over the years." Following is a list of several classes of advertising The Times does not accept. No. 1. Fraudulent or deceptive advertisements. No. 2. Offers of something of value for nothing; advertisements that make false, unwarranted or exaggerated claims. No. 3. Adver- [fol. 1717] tisements that are ambiguous in wording and which may mislead. No. 4. Attacks of a personal character. No. 5. Advertisements that reflect adversely on other advertisers or their goods. No. 6. Advertisements holding out the prospect of large guaranteed dividends or excessive profits. No. 7. Advertisements that are indecent, vulgar, suggestive or otherwise offensive to good taste. No. 8. Matrimonial offers. No. 9. Medical advertising of products containing habit-forming or dangerous drugs; offers of free medical treatment; advertising that makes exaggerated remedial, relief or curative claims. No. 10. Advertisements of fortune telling, dream interpretations, individual horoscopes and nativity writings. No. 11. Any other advertising that may cause money loss to the reader, or injury in health or morals, or loss of confidence in reputable advertising and honorable business, or which is regarded by The New York Times as unworthy. In addition, there are statements in other classes of advertising which The Times does not accept, as, for example, unwarranted promises of employment in school advertising, or the claim that any cosmetic will cure wrinkles or banish freckles. The Times does not accept any advertising whatsoever of an individual or of a firm which it has reason to believe to be of undesirable character. The text of every advertisement ordered

for insertion in The Times is read first by the Publication Office staff, or in the case of Classified Advertising by the copy passers in that department. In addition, practically every display advertisement is read by the staff of the Advertising Acceptability Department. When statements are discovered which that Department believes ought to be changed or eliminated, the advertiser or its advertising agency is notified. Investigations are frequently made by the Advertising Acceptability Department to develop further information or to determine the accuracy of statements. The recognized agencies of investigation, such as the National and New York Better Business Bureaus are consulted and frequently are asked to shop an advertisement. Reports of commercial fact-finding agencies are utilized for their background information concerning business firms. In many classifications advertisers in The Times must fill out questionnaires. These classifications include: Financial, which has one questionnaire for securities dealers and one [fol. 1718] for advisory services: Book Exchange, Business Opportunities, Camps, Education, Garden, Mail Order, Mortgages and Stamps and Coins. In the case of financial advertising all announcements are first submitted to a special committee on financial advertising to advise the Advertising Acceptability Department. New financial advertisers must fill out questionnaires and The Times also obtains reports on them from commercial and governmental agencies. If any advertiser makes inaccurate or misleading statements and refuses to correct them, the advertising is declined. Further, if The Times receives complaints from its readers which, upon investigation, convince the Advertising Acceptability Department that the business practices of the firm are unfair or open to question, The Times declines further announcements of that firm. Another function of the Advertising Acceptability Department is to pass upon those questions which cannot be set forth in a code of rules but which have to do with advertising which may be offensive to good taste. The Times frequently requires changes in copy and illustrations in advertising which are distasteful or salacious. RETAIL ADVERTISING. The following regulations apply to retail advertising: No. 1.

General Statements. Untrue, deceptive or misleading statements or illustrations are not acceptable. No. 2. Competitive Claims Which Refer to Quality of Price. A. Statements or representations which refer to the goods, price, service or advertising of any competitor are not acceptable. B. Statements which claim to undersell competitors are not acceptable. No. 3. Competitive Claims on Policy or Business Methods. A. Statements which make or imply, comparisons must confine those comparisons to the individual advertiser's own merchandise, services, prices or business methods. B. Statements of fact, if generally known, and susceptible of definite proof are acceptable. No. 4. "Bait Offers" "Bait" offers of merchandise wherein the customer is denied a fair opportunity to purchase, are not acceptable. Some examples follow of expressions in advertisements which are not acceptable and the changes required to make them acceptable." On the left is "NOT ACCEPTABLE" and on the right "Acceptable as Revised." "NOT ACCEPTABLE. The lowest price ever offered." [fol. 1719] As revised, "The lowest price we ever offered." "The best buy in town." As revised, "One of the best buys in town." "Will surpass anything you could possibly find." As revised, "Will surpass anything we could possibly offer." "Unrivaled in fine quality." As revised, "Unexcelled in fine quality." "Unprecedented value (or quality)." As revised, "Exceptional value (or quality)." "Unheard of prices." As revised, "Amazingly low prices." "The finest coat we have ever seen." As revised, "The finest coat we have ever sold." "We give you the most for your dollar." As revised, "We give you exceptional value for your dollar." "Superior to any you've seen at this price." As revised, "Superior to what you'd expect to find at this price." "The outstanding value in men's footwear." As revised, "An outstanding value in men's footwear." "We believe you will find these values greater than elsewhere." As revised, "We believe you will find these values unsurpassed." "MEDICAL ADVERTISING. When advertising of any preparation is offered which advertises medication or treatment, The Times asks the opinion of medical consultants, including those in its own Medical Department and the recognised local and national medical bureaus of information. These

medical authorities do not exercise censorship over The New York Times columns. The Times applies its judgment to the information and makes its own decisions. The Times does not accept the advertising of any preparation which might lead to self-diagnosis or self-medication of any serious condition or illness. The advertising, even of acceptable preparations, is carefully scrutinized. The Times does not accept medical advertising which contains testimonials, questionable "before and after" illustrations, or any copy which goes too far in indicating that doctors "prescribe" or recommend any preparation for a stated illness or condition. The Times does not accept the advertising of radio programs or broadcasts of non-acceptable medical preparations. The Times does not accept the advertising of preparations which may be harmless in themselves but which either in their newspaper advertising copy or on their labels or in their descriptive pamphlets make grossly unwarranted claims. As a general policy, The Times does not permit racial or religious discrimination in its advertising col- [fol. 1720] umns." The New York Times. "All The News That's Fit to Print." April 1, 1960.

Mr. Nachman: If you maintain that the advertisement which is the basis of this suit was "proffered to the Times by responsible persons," give the name and address of each such person.

Mr. Steiner: See answer to preceding interrogatory numbered 2.

Mr. Nachman: Please state the number of issues of the March 29, 1960, edition of The New York Times which were sold and distributed and give the geographical extent of such sale or distribution. Did The New York Times initiate, by mailing or otherwise arranging for shipment, the distribution of issues of the March 29, 1960, New York Times in the City of Montgomery and State of Alabama?

Mr. Steiner: The number of issues of March 29, 1960 were approximately 650,000 and were given national distribution. Those issues sold or distributed in the City of Montgomery, State of Alabama, were sold or distributed pursuant to orders placed with The New York Times by wholesale or retail dealers or mailed to subscribers who had ordered subscriptions from The New York Times Company and the same were either mailed or otherwise shipped

from New York City pursuant to said orders or orders for subscriptions. The issues distributed in Alabama totaled approximately 394 copies. Of these approximately 35 copies went to Montgomery County.

Mr. Nachman: Has The New York Times accepted for publication any other advertisements from the "Committee to Defend Martin Luther King and the Struggle for Freedom in the South," other than the advertisement which appeared in the March 29, 1960, issue of The New York Times? If so, attach to your answer to this interrogatory such issue or issues of the New York Times.

Mr. Steiner: No.

Mr. Nachman: Give all of the facts in your possession which tend in any manner to substantiate the matter quoted in Interrogatory No. 12, and include with this answer the names of persons, and if documentary substantiation is claimed, true and correct copies of such documents.

[fol. 1721] Mr. Steiner: See answers to interrogatories 4 and 12 herein. I read that from the supplemental answers.

Mr. Nachman: For the Record, that would be the McKee telegram and the Sitton memoranda. We offer these in evidence, if the Court please.

(Interrogatories to Defendant, The New York Times Company and Answers and Supplemental Answers to the Interrogatories in the Case of L. B. Sullivan, Plaintiff, versus The New York Times Company, a Corporation, et al., Defendants, in the Circuit Court of Montgomery County, Alabama, offered and received in evidence and identified as Plaintiff's Exhibit No. 348.)

[fol. 1722] Grover C. Hall, Jr., having been duly sworn, was called as a witness for the Plaintiff and testified as follows:

Direct examination.

By Mr. M. R. Nachman, Jr.:

Q. Will you state your name, please?

A. Grover C. Hall, Jr.

Q. You are the editor of the Montgomery Advertiser?

A. Yes, sir.

Q. How long have you occupied that position?

A. Since 1947.

Q. Mr. Hall, have you read the advertisement which has been introduced into evidence and identified as Plaintiff's Exhibit No. 347 which I am now showing you?

A. Yes, sir.

Q. I direct your attention to the third paragraph in the left hand column of that exhibit which is the paragraph beginning, "In Montgomery, Alabama, after students sang "My Country, 'Tis of Thee" on the State Capitol steps, their leaders were expelled from school, and truckloads of police armed with shotguns and tear-gas ringed the Alabama State College campus. When the entire student body protested to State authorities by refusing to re-register, their dining hall was padlocked in an attempt to starve them into submission." I ask you to look at that paragraph if you will.

A. Yes, sir.

Q. You are familiar with it?

A. Yes.

Q. I will ask you, Mr. Hall, whether you associate the statements contained in that paragraph with any person or persons?

Mr. Embry: Go ahead and finish your question but don't answer it, Mr. Hall. Let me object to it before you answer.

Mr. Nachman: I am through.

Mr. Embry: Your Honor, we object to that question on the grounds that it invades the province of the jury and it [fol. 1723] calls for an ultimate inquiry into fact that the jury is to inquire into in this case and it is incompetent, irrelevant and immaterial and it calls for an undisclosed mental operation of this witness and it calls for an unauthorized mental conclusion on the part of this witness. The fact that he is asking about is a fact that is addressed entirely to the jury in this case. It is a fact for the jury to decide, Your Honor. We object to it on these grounds.

Lawyer Crawford: We make the same objection.

The Court: You join in the objection?

Lawyer Crawford: Yes, Your Honor. We join in the

same objection with the same grounds as to these other defendants.

Mr. Nachman: Your Honor, may I be heard on that question?

The Court: Well, I was about to rule with you and I might change my mind—

Mr. Embry: Your Honor, I would like to add some other grounds.

The Court: Go ahead.

Mr. Embry: Your Honor, this is an attempt to substitute this witness' opinion for that of the jury. The jurors are the triers of fact in the case and it is what the jury associates from a reading of the article and not from the witness and I have an Alabama authority on that point, Your Honor, if you would like to see it.

The Court: Well, the way I read these cases here, they hold in some of these cases that it is permissible to ask the witness when you get him on the witness stand after he has read that article whether he understood it to refer to the plaintiff, that is, Sullivan here, and I think that would be admissible—

Mr. Embry: Your Honor, that's the Iowa case but we have an Alabama case.

The Court: Well, let me rule against you—it is a question of identification—let me rule against you and give you an exception.

Mr. Embry: We except, Your Honor.

Lawyer Crawford: We also would like to except to the [fol. 1724] Court's ruling in behalf of the other defendants, Your Honor.

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. You may answer the question, Mr. Hall.

A. Please re-state the question.

Q. Referring to the statements contained in the paragraph of the ad to which I referred you, do you associate those statements with any person or persons?

Mr. Embry: We make the same objections, Your Honor—

The Court: Same ruling.

Mr. Embry: We except.

Lawyer Crawford: We except.

The Witness: I think I would associate it with the City government—the Commissioners.

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. The Commissioners of the City.

A. Yes, sir.

Q. Is that the City of Montgomery, Alabama?

A. Yes, sir.

Q. Now, if you believed the statements contained in that same paragraph to be true, Mr. Hall, would that belief affect your opinion or judgment of the persons so associated, and in this case, would it affect your judgment of the fitness of that person to hold the office of Commissioner?

Mr. Embry: We object to that question, Your Honor. It invades the province of the jury and it calls for an unauthorized conclusion on the part of this witness and for an undisclosed mental operation. It is speculative, it invades the province of the jury and the question addressed to the witness is the question of ultimate inquiry of fact to be addressed to the jury in the case, if the Court please, and not the opinion of a person brought in here to testify what his impression is or what he thinks or what he speculates or how it might affect him if he believed it is pure speculation, if the Court please. It is a question of fact adduced from that witness stand as to what it may [fol. 1725] or may not have done—

Mr. Nachman: Your Honor, this matter was before you in the case of Johnson Publishing Company vs. Davis and a recent opinion by the Alabama Supreme Court in a separate opinion referred to this kind of testimony—

The Court: Well, I don't want to cut you short but I think the question is good and you may have an exception.

Mr. Embry: We except, Your Honor.

Lawyer Crawford: We except, Your Honor.

The Witness: Well, it states there about starving students into submission and starvation is an instrument of reprisal and would certainly be indefensible in my mind in any case.

Mr. Embry: Your Honor, we move that answer be stricken as not responsive to the question—

The Court: Motion denied.

Mr. Embry: We except.

Lawyer Crawford: We except.

Mr. Nachman: No further questions, if the Court please.

Cross examination.

By Mr. T. Eric Embry:

Q. Mr. Hall, where did you first read this ad?

A. In The New York Times.

Q. On what date and on what occasion, sir?

A. Well, I am unable to say on that. I am unable to say precisely how it came to be on my desk but the full page ad was brought to me by some source.

Q. Did you have the issue of the March 29th newspaper before you when you read this ad or was this ad physically detached from the balance of the newspaper?

A. My recollection is that it was detached. A single sheet.

Q. Did Mr. Nachman leave it there on your desk?

A. Well, no. I have no recollection of that whatsoever.

Q. Do you know who brought it?

[fol. 1726] A. No. I do not know who brought it.

Q. Is it not a fact that Mr. Nachman's firm of Steiner, Cram and Baker represents your newspaper over there?

A. That is correct, sir.

Q. And they have so represented your paper for a good long while?

A. That's correct, sir.

Q. And it was just found on your desk and you—

A. Oh, I am not saying that it was left there like a baby on a door step. I just don't remember what person brought it to me. It didn't come through the mail but it was brought by hand.

Q. You don't know the identity of the person who brought it there?

A. I don't recall that. No, sir.

Q. It could have been Mr. Nachman or it could have

been Mr. Baker or someone else. You don't actually know.

A. It is possible but I have no recollection of that.

Q. Mr. Nachman talked to you about it after you read it, did he not?

A. I have no recollection when my first conversation with Mr. Nachman was about this case.

Q. And you, I believe, gave it quite some considerable publicity by news writing or editorial writings in your newspaper, did you not?

A. Yes, sir. I wrote an editorial about the ad within a few days after receiving it.

Q. In The Montgomery Advertiser.

A. Yes.

Q. Do you know the date or about when you wrote that editorial?

A. Well, it so happens that I got it out of the files today and for that reason I am able to tell you.

Q. All right, sir. Please tell me.

A. It was April 7th.

Q. After the 29th day of March. They were both in 1960.

A. Yes.

Q. Now, you say that when you read this recitation in the advertisement and I quote, "In Montgomery, Alabama, after students sang 'My Country, 'Tis of Thee' on the State Capitol steps, their leaders were expelled from school, [fol. 1727] and truckloads of police armed with shotguns and tear-gas ringed the Alabama State College Campus. When the entire student body protested to state authorities by refusing to re-register, their dining hall was padlocked in an attempt to starve them into submission," and I believe Mr. Nachman referred you to another paragraph which I will take up separately—you say that you tell these gentlemen of the jury that that called to your mind or associated to you in your mind the City Government of the City of Montgomery?

A. Yes, with reference to the phrase about starvation. The other didn't hit me with any particular force.

Q. In other words, this part—I will ask you if this is what you are saying—"When the entire student body protested to state authorities by refusing to re-register, their

dining hall was padlocked in an attempt to starve them into submission," and that associated in your mind, the statement that I just quoted, with the City Government of the City of Montgomery. Is that correct?

A. That's correct because—

Q. I didn't ask you why, Mr. Hall. I just asked you if that's what it did to you in your mind.

A. Well, I indicated—

Mr. Nachman: Your Honor, we object to that. We think the witness has a right to answer the question—

Mr. Embry: And I think I have a right to question him too on cross examination, Your Honor, and—

The Court: Well, you may go into it on re-direct examination. Go ahead.

By Mr. T. Eric Embry: (Continuing)

Q. Now, Mr. Hall, I believe you stated on direct examination that in turn that associated in your mind by that reference—that caused your mind—that associated in your mind or called to your mind the City Government and that in turn called to your mind the Commissioners and that in turn called your mind to Mr. Sullivan. Is that correct, sir?

A. Well, I haven't made any reference to Mr. Sullivan. [fol. 1728] Q. Did it associate in your mind this statement that we have just read—

A. I associated it with the City Government since they are responsible for good order in this community and now that you ask it I would naturally think a little more about the police Commissioner because his responsibility is exclusively with the constabulary.

Q. That's what came to your mind when you read, "When the entire student body protested to state authorities by refusing to re-register, their dining hall was padlocked in an attempt to starve them into submission."

A. That's right.

Q. All right, sir. That's all.

Cross examination.

By Lawyer Crawford:

Q. Mr, Hall, you are a publisher of The Montgomery Advertiser. Is that correct?

A. No.

Q. What are your duties?

A. I am editor and Vice-President.

Q. As an editor and Vice-President of a newspaper you would have occasion to do more reading than the average man. Isn't that right?

A. You mean newspapers?

Q. Any matter. Particularly newspapers.

A. I have the responsibility to do it.

Q. You do quite a bit of reading, do you not?

A. Yes.

Q. Would you say in your opinion that the reading you do is more than the average layman within the City of Montgomery?

A. Yes.

Q. Then, of course, your opinion as to the ad is an expert opinion. Is that correct, sir?

A. Well, I would hesitate to claim that distinction for myself.

Q. Well, Mr. Hall, you say—

A. I am a professional newspaper man.

Q. But you do more reading than the average layman, do you not?

[fol. 1729] A. Yes.

Q. Because your job calls upon you to do so.

A. Yes.

Q. And, of course, interpretation of articles in other newspapers also. Isn't that right, sir?

A. Yes.

Q. Then, you pose yourself as an expert then.

A. (No answer from the witness.)

Q. Sir?

A. I suppose one would say that I have had more experience with written matter than non-newspaper people.

Q. Well, then, your opinion as an editor of The Mont-

gomery Advertiser does not necessarily reflect the opinion of other newspapers. Is that correct, sir?

A. Emphatically not.

Q. And it does not that of The New York Times either.

A. Emphatically not.

Q. And all of the other newspapers in the City of Montgomery or the State of Alabama?

A. That is correct. There is quite a diversity.

Q. Now, you mentioned that this was called to your attention on or about April 7th.

A. No. The editorial that I wrote in response to it was printed April 7th.

Q. Well, about how many days prior to April 7th did you see or read this advertisement?

A. Well, I am unable to answer that precisely. The ad was published on March 29th.

Q. As a custom in your business, Mr. Hall, as an editorial writer, do you write immediately on subjects which you intend to print?

A. Well, there is a great variation on that. Some subjects you are able to shoot from the hip on, others you have to do a little research first and then there are interruptions in the daily routine and, for example, this afternoon I am not writing.

[fol. 1730] Q. Now, Mr. Hall, did you shoot from the hip on this New York Times article?

A. I can't answer that with entire precision because it has been some time—

Q. Well, now—I think you have answered the question, Mr. Hall. Now, Mr. Hall, did you do any research on this article?

A. Oh, I didn't have to do any research on this.

Q. Then, you just shot from the hip, then?

A. Well, on this it is possible to do it just like it is possible to testify what week this is.

Q. Now, Mr. Hall, at the time that you went into this ad and started to shoot from the hip, how many days did it take you to do that?

A. You mean, how many days did it take me to compose the editorial?

Q. Yes.

A. I don't suppose it took me more than forty minutes to write the editorial. I don't have any recollection of that.

Q. You would say that you wrote this editorial about April 6th then.

A. Well, it is possible—oh, yes. It didn't lie around any. It went down to the printing room—

Q. Did you call your lawyers regarding that?

A. We never call a lawyer except on very rare occasions.

Q. Did you call him on this occasion?

A. No. No consultation.

Q. Did you call the City Commissioner?

A. I have been on bad terms with Commissioner Sullivan. I couldn't very well call him.

Q. How do you get along with him now then, Mr. Hall?

A. Conditions have been somewhat restored amicably. And are cooperative.

Q. And you are cooperating this afternoon, aren't you?

A. No.

Q. I say, you are cooperating this afternoon—

A. The answer is no.

Q. No?

A. No.

[fol. 1731] Q. May I ask you, Mr. Hall, how did these bad terms develop? How did you get on bad terms with Commissioner Sullivan?

A. Due to the—

Mr. Embry: Your Honor, we object to that. That is getting quite far afield as to the materiality of issues in this case.

The Court: Offhand, I don't see the materiality of that line of questioning.

Lawyer Crawford: Your Honor, I am only trying to show the interest this witness has in the plaintiff for editorializing in his paper or his statement here on the Stand and he has posed himself as an expert and I want to find out whether he is or not—

The Court: He didn't say he was an expert. He said he had a little more experience than other people.

Lawyer Crawford: Your Honor, he is a witness for the

plaintiff and I would like to know what interest does he have here. The witness has testified that at one time he was on bad terms and now he is on good terms and I am wondering what caused those terms to come about and why this opinion is being expressed here today. I realize it may be somewhat unusual and I realize that the Court's time and the time of these gentlemen of the jury is valuable but so is the time of these defendants valuable too—

The Court: I think it is a little far-fetched. I sustain the objection and give you an exception.

Lawyer Crawford: We except. I would like to ask Mr. Hall though, Your Honor, about this phase of starvation he referred to and I would like to ask him what he meant by that when he said that hit him most when the other portion of the ad did not phase him.

Mr. Embry: We object to that, if the Court please. We object to it for the same reasons we objected to Mr. Nachman's question along that line. It is a mental operation of the witness and permits him to state a conclusion of his own mind and invades the province of the jury as it is up to them to say as to what is meant by taking the ordinary import of the words in the article and—

Lawyer Crawford: We withdraw our question, if the Court please.

[fol. 1732] The Court: All right. The question has been withdrawn. Go ahead.

Lawyer Crawford: No further questions.

Re-direct examination.

By Mr. M. R. Nachman, Jr.:

Q. Mr. Hall, reference has been made to your editorial of April 7th by counsel for The New York Times and by counsel for one of the defendants here, other than the New York Times. Do you have a copy of that editorial with you?

A. Yes, sir.

Mr. Nachman: I would like to introduce it into evidence at this time, Your Honor.

Mr. Embry: Your Honor, we object to that, if the Court please. His editorial about the advertisement has nothing to do with this suit.

The Court: Let me see what the editorial says.

Mr. Embry: He claims he has been libeled by a publication appearing in The New York Times issue of March 29th and not by a libel committed by the editorial writing of The Montgomery Advertiser.

Lawyer Gray: We join in that objection, Your Honor.

Mr. Embry: I might add also, Your Honor, that it is hearsay and not the best evidence.

Mr. Nachman: We only offered it, Your Honor, because it has been gone into by both counsel with the not too heavily veiled insinuation that either myself or some member of my law firm, Mr. Steiner or Mr. Baker, had something to do with procuring this editorial.

The Court: I don't believe this is admissible. Let me exclude it and give you an exception.

Mr. Nachman: We have no further questions.

[fol. 1733] Arnold D. Blackwell, Having been duly sworn, was called as a witness for the plaintiff and testified as follows:

Direct examination.

By Mr. M. R. Nachman, Jr.:

Q. Will you state your name to the Court and jury, please, sir?

A. Arnold D. Blackwell.

Q. Do you live in Montgomery, Alabama, Mr. Blackwell?

A. Yes, sir.

Q. What is your business here in town?

A. Real estate and insurance.

Q. How long have you been engaged in that business?

A. Approximately two years in real estate and about four years in insurance.

Q. Do you know the plaintiff, Mr. Sullivan here?

A. I do. Yes, sir.

Q. Mr. Blackwell, I show you Plaintiff's Exhibit No. 347

we have been reading from this ad is not true and don't most people know that it is not true?

A. Yes, sir. They know it is not true.

Q. No one around here assumes that any of that is true, do they?

A. Now, you are speaking of all of it or—

[fol. 1746] Q. I am talking about parts of it.

A. Parts of it could be true. Yes, sir.

Q. In other words, it is a little bit of an exaggeration of the truth, isn't it? That's about what it amounts to, doesn't it?

A. Some parts I think are and some parts I think are true.

Q. Everybody knows that, don't they, as a matter of common knowledge—as a matter of common public knowledge?

A. I assume so. Yes, sir.

Q. All right, sir. Thank you very much. No further questions.

Lawyer Gray: No questions.

Re-direct examination.

By Mr. M. R. Nachman, Jr.:

Q. Mr. Blackwell, you get no pay as a member of the Water and Sewer Board of Montgomery, do you?

A. Yes, sir. They pay us for the day that we meet with the Board.

Q. How much is that, sir?

A. Twenty dollars or something like that.

Q. Twenty dollars a day on the day that you meet with the Board?

A. One day a month. Yes, sir.

Q. One day a month.

A. Right.

Q. You get no pay other than that?

A. No, sir.

Q. In other words, it is not a regular job?

A. Oh, no, sir.

Q. In that paragraph that I showed you beginning with

the singing on the Capitol steps and so forth, did you mean to exclude from your association with police activity the matter of "ringing the campus with truckloads of police armed with shotguns and tear-gas?"

Lawyer Crawford: We object to that as being a leading question, Your Honor.

The Court: It may be leading. You may re-phrase the question.

[fol. 1747] By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Do you associate that phrase with anybody?

A. Which phrase is that?

Q. The phrase, "truckloads of police armed with shotguns and tear-gas ringed the Alabama State College Campus"

A. Yes, sir. I associate that with the police force and the Police Commissioner as I mentioned before.

Mr. Embry: All right. That's going to bring on more talk.

Re-cross examination.

By Mr. T. Eric Embry:

Q. Mr. Blackwell, now, we are talking about the shotguns and the tear-gas.

A. Yes, sir.

Q. Now, you say you associate that with the police. That's correct, isn't it?

A. That's right.

Q. And that's who it refers to in the words of the article —the police.

A. That's right, sir. It says, "Truckloads of police armed with shotguns and tear-gas."

Q. You don't see anything about the Commissioner being out there with them, do you?

A. No, sir.

Q. You are familiar enough with the City Government, being on the Water and Sewer Board, to know that we have a Chief of Police in Montgomery too, haven't we?

A. Yes, sir. We have.

which is an advertisement which appeared in The New York Times under the date shown there and I ask you whether you have ever seen that advertisement before?

A. Yes, sir. I have.

Q. Was one of the occasions on which you saw it in my office?

A. Yes, sir. I did.

Q. I direct your attention to the third paragraph on the left hand side of the article which reads as follows, "In Montgomery, Alabama, after students sang 'My Country, 'Tis of Thee,' on the State Capitol steps, their leaders were expelled from school, and truckloads of police armed with shotguns and tear-gas ringed the Alabama State College Campus. When the entire student body protested to state authorities by refusing to re-register, their dining hall was padlocked in an attempt to starve them into submission." I ask you to look at that paragraph and read it and familiarize yourself with it.

Mr. Embry: Your Honor, while he is doing that may I inquire of the witness on Voir Dire as to when he saw this?

Mr. Nachman: We think that is a matter for cross-[fol. 1734] examination, Your Honor.

The Court: I don't believe you can ask that on Voir Dire.

Mr. Embry: Well, Your Honor, you certainly wouldn't permit him to testify about something if he didn't read it in the paper and if he hadn't seen it until it was shown to him by one of the attorneys for the plaintiff in this case—

The Court: I take it it would have to be read before the beginning of the trial, wouldn't it? It would have to be read before the beginning of the trial or before the suit was filed—

Mr. Embry: Well, Your Honor, that would be a publication of Mr. Nachman's and not a publication by this defendant.

Mr. Nachman: Your Honor, we think all of these things can be gone into on cross examination in an attempt to undermine the witness' testimony if they can do so—

The Court: Let me give you an exception to the Court's ruling.

Mr. Embry: Your Honor, may I make a statement?

The Court: Yes.

Mr. Embry: Your Honor, that would not be a publication upon the part of this defendant if Mr. Nachman went ahead and proffered it to someone who otherwise had not read it—

Mr. Nachman: We are not offering the testimony as a republication of a libel if that's what you are worried about.

The Court: You may have an exception.

Mr. Embry: We except.

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Have you looked at it, sir?

A. Yes, sir.

Q. Do the statements contained in that paragraph associate in your mind any person or group of persons?

Mr. Embry: Don't answer that question until we have an opportunity to object, please. We object, Your Honor, on the grounds that it invades the province of the jury and [fol. 1735] it calls for an undisclosed mental operation of the witness, it calls for an unauthorized conclusion on his part, and it goes to the question of the ultimate inquiry of fact before the jury, that is to say, whether the advertisement complained of identifies any person or identifies the plaintiff in this cause which is a question of fact for these gentlemen sitting on the jury to determine and it is an attempt to substitute the judgment of the witness or his opinion for that of the jury and that there has been no proper predicate laid or foundation laid for the asking of that question.

Mr. Nachman: Your Honor, may we stipulate that the same objections may be made to this question each time as propounded to this witness—

The Court: I will let the question in and hold that it is—

Mr. Embry: I have an exception, Your Honor, and can we have an understanding that the Court Reporter will write it in and write in these objections and any other additional grounds that I can think of—

The Court: Oh, yes. We have a rule here although I can never get the attorneys to adhere to it—that if you don't

name any grounds, then the whole world is yours but if you do so, then you are restricted to the grounds you name.

Mr. Nachman: We will stipulate with Mr. Embry that he may make any objections later and all that he can think of.

Mr. Baker: Well, we don't want them repeated in Open Court each time the question is asked.

Lawyer Gray: Let the Record show that we take a similar objection to this line of questioning and note an exception to the Court's ruling.

The Witness: Would you re-state your question, please?

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Do the statements contained in that paragraph that I have just shown you—are they associated in your mind with any person or persons?

[fol. 1736] A. Yes, sir.

Q. With whom?

A. With the Police Commissioner and the police force. The people on the police force.

Q. Now, if you believed the statements in that paragraph to be correct, Mr. Blackwell, and true, would they affect your opinion of the Police Commissioner in any way?

Mr. Embry: We object to that question, if it please the Court. It is calling for an unauthorised conclusion on the part of the witness, it again invades the province of the jury in determining the fact that that question called for, that is, whether any damages were suffered by the plaintiff and if there is a libelous statement—that's a fact for the jury to determine and it calls for a mental operation. It calls for the witness to determine a fact which is up to the jury here to determine—

The Court: I will let it in and give you an exception.

Mr. Embry: It is also incompetent, irrelevant and immaterial and if we may, Your Honor, we will have the same understanding as to our objections to this same type question whenever he asks that question and to whomever he asks that question, if that is agreeable with counsel for the plaintiff.

Mr. Nachman: It is agreeable, Your Honor, and as Mr. Baker said, we made the stipulation in order to avoid a repetition of grounds each time the question is asked.

Mr. Embry: This is not the same question as the last question.

Mr. Nachman: We will make the same stipulation in regard to any of them, Mr. Embry.

Mr. Embry: All right. We just want the Record to be right, Your Honor.

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. You may answer that question too, Mr. Blackwell. If you believed the statements contained in that paragraph [fol. 1737] to be true and correct, would that belief affect your opinion of the plaintiff in any way?

A. Yes, sir. It would.

Q. In what way, sir?

A. Well, if it were true that "When the entire student body protested to state authorities by refusing to re-register, their dining hall was padlocked in an attempt to starve them into submission", I would think that the people on our police force or the heads of our police force were acting without their jurisdiction and would not be competent for the position.

Q. Now, Mr. Blackwell, I call your attention to this paragraph in the second column which reads as follows, "Again and again the Southern violators have answered Dr. King's peaceful protests with intimidation and violence. They have bombed his home almost killing his wife and child. They have assaulted his person. They have arrested him seven times—for "speeding," "loitering" and similar "offenses." And now they have charged him with "perjury"—a felony under which they could imprison him for ten years." I ask you there whether those statements associate themselves in your mind with any person or persons?

Mr. Embry: Don't answer the question yet. We have the same objections and grounds, Your Honor?

The Court: Yes.

Lawyer Crawford: We have the same grounds of objection and exception also, for the Record.

The Witness: Which statements particularly?

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. I am referring to, "Again and again the Southern violators have answered Dr. King's peaceful protests with intimidation and violence. They have bombed his home almost killing his wife and child. They have assaulted his person. They have arrested him seven times—for 'speeding,' 'loitering' and similar 'offenses.' And now they have charged him with 'perjury'—a felony under which they could imprison him for ten years." I refer to those statements, sir.

A. The last of the statements, "They have arrested him [fol. 1738] seven times—for 'speeding,' 'loitering' and similar 'offenses.' And now they have charged him with 'perjury'—a felony under which they could imprison him for ten years," I associate those with the Police Department and with the Police Commissioner, assuming they are referring there to the Police Commissioner and the Police Department. Does that answer your question?

Q. Again, do those statements in that paragraph if you believed them to be true, would they affect your opinion of the Police Commissioner?

A. Yes, sir. They definitely would.

Q. The same way that you previously testified?

A. Yes. The same way I previously testified.

Q. All right, sir. That's all.

Cross examination.

By Mr. T. Eric Embry:

Q. Mr. Blackwell, were you subpoenaed by the plaintiff in this cause?

A. No, sir, I was not.

Q. When did Mr. Nachman talk to you and ask you to come up here and testify in this case?

A. I believe it was about three weeks ago.

Q. Was the first time in which you had seen the advertisement that you are holding there in your hand when Mr. Nachman brought it to you or else when you went to his office and saw it there?

A. That's right, sir.

Q. Was that a result of a contact he made with you? Did he call you or did you call him and tell him you would testify in this case and that then he showed you that ad and you said you would give him an opinion about the content of it or what you associated in your mind—

A. He called me into his office and showed me this ad and at that time I indicated that I had seen the ad before but I don't remember just where and under what circumstances and that it had been discussed several times with different people and at this time I told him that I could only testify to the things that I thought were truthful in the ad.

Q. Well, you are, of course, giving an opinion about it?

[fol. 1739] A. That's right.

Q. You readily concede that, don't you?

A. Yes, that's right.

Q. Now, you said you don't recall when you first saw this but you do recall that you heard it talked about.

A. Yes, sir.

Q. Had you heard it talked about in connection with this litigation—this law suit?

A. There has been a considerable amount of discussion in reference to this.

Q. To the litigation.

A. To the litigation. Yes, sir.

Q. Then, did Mr. Nachman call you about this matter?

A. Yes, sir. He called me on the phone and asked me to come to his office and talk to him.

Q. Had you previously indicated to him that you had seen this ad or had heard it talked about or heard this litigation talked about—

A. No, sir.

Q. So you would have some indication as to why he called you. That's what I am talking about.

A. No, sir.

Q. He called you with reference to coming to his office for the purpose of showing you that ad and asking you what you thought at the time he showed you the ad and as to what the statements contained therein associated in your mind or what was associated in your mind by these statements and I will ask you if he told you at that time why

he was calling you or what occasioned him calling you as opposed to calling me or somebody else. That's what I am trying to find out.

A. At the time he called he called me and asked me if I was familiar with the ad and I told him I had heard of it and had discussed it and he asked me if I would come to his office and discuss it with him.

Q. Do you know where he got the information? Had you told any others that you may have seen this ad? Did you discuss the matter—

A. No, sir.

[fol. 1740] Q. Did you discuss the matter so that the information that you had seen it became known to Mr. Nachman or someone else?

A. No, sir. Not to my knowledge.

Q. You don't recall ever having mentioned that you had seen this ad to anyone?

A. I recall that I discussed the case but I don't recall the individuals that I discussed it with. It was just a conversation and it was a surprise to me, I might say, when he called me and asked me to come down to his office about it.

Q. Do you recall whether you ever discussed it with Mr. Sullivan?

A. No, sir, I know I had not. I know I had not discussed it with Mr. Sullivan.

Q. Do you know him?

A. Mr. Sullivan?

Q. Yes.

A. Yes, sir. I know him just from personal contact with him and the fact that he ran for Commissioner and was elected Commissioner.

Q. What sort of personal contact have you had with him, Mr. Blackwell?

A. Only in reference to his running for office as Commissioner of Police.

Q. Is your real estate and insurance business located down town?

A. Yes, sir. It is located at 422 South Court Street.

Q. That's down town, isn't it?

A. Yes, sir. That's right behind the Walter Bragg Smith Apartments.

Q. Do you do any business with the city?

A. I am on the Water Board of the City.

Q. You are a member of the Water Works Board?

A. Yes, sir.

Q. How long have you been a member of the Water Works Board?

A. Since about February of this year.

Q. Do you have occasion to come into contact with the City Commissioners and the city government—the members of the city government, as a member of the Water Works Board?

A. Yes, sir. On frequent occasions.

[fol. 1741] Q. How did you get on the Water Works Board? Is that an elective office?

A. No, sir. It is an appointive office.

Q. By whom is the appointment made?

A. I believe it is an appointment made by the Commissioners and the Mayor. All three are the ones who—

Q. All three of them including Mr. Sullivan.

A. Yes.

Q. They make the appointment by which you become a member of the Water Works Board.

A. That's right.

Q. Is that position controlled by tenure? Does it have some sort of definite term of office?

A. Yes, sir. I go off in 1961, I believe.

Q. Can you be removed at any time?

A. Yes, sir. You can be.

Q. By the Commissioners?

A. I assume so. They appoint you and I assume they can take you off.

Q. You assume that they can fire you.

A. That's right.

Q. By the same people that hire you.

A. That's right.

Q. Now, have you been fortunate enough to sell the city any insurance?

A. Not yet.

Q. Have you made an effort to?

A. No, sir. I haven't.

Q. Do you hope to in the future?

A. No, sir.

Q. All right, sir. Now, Mr. Blackwell, would you say—I direct your attention to the ad once again, please, sir. Now, after Mr. Nachman called you—I believe you said you went over to his office.

A. That's right.

Q. Did he sit down with you and did he have this in his possession?

A. He had the copy. I am not sure whether this was it or not.

[fol. 1742] Q. It could have been though.

A. Yes, but I don't remember.

Q. Did he tell you why he wanted to talk to you about this ad?

A. Yes, sir.

Q. Did he tell you on that occasion that he wanted to try to prove that the words that are recited in that ad identified the Police Commissioner, Mr. Sullivan, the Plaintiff in this case, and that his purpose was to attempt to show that the words contained in the ad attempted to identify Mr. Sullivan with the statements contained in the ad? Did he say something like that or something like that in substance?

A. I believe it was something to that effect in substance. He asked practically the same questions that he asked today.

Q. Did he direct your attention specifically to these two paragraphs that I am pointing to, this paragraph here and this one, about which he questioned you about on direct examination?

A. Yes, sir, he did. He had excerpts of these two paragraphs that he showed me.

Q. On some typewritten paper?

A. I believe it was, sir. And he showed me this ad and he had me look at the other one and these were taken from that ad.

Q. They were taken from the ad?

A. Yes, sir.

Q. He said they were taken from the ad.

A. Yes, sir.

Q. And when you discussed that proposition of what became associated in your mind with these statements in the

ad it was having before you a typewritten excerpt from the ad and not the ad as a whole. Is that correct?

A. Well, not exactly, sir. I had the ad and these excerpts. Actually at the time I didn't look too much at the detail. We just discussed mainly the questions of my opinion on it.

Q. Now, you told us, I believe, that when your attention was directed—first, let me ask you this. Am I correct in [fol. 1743] assuming from your previous testimony on direct examination and on cross examination that you are under the impression or that your best recollection is that you may have seen this ad at a time before Mr. Nachman showed it to you? Am I correct in that assumption?

A. Sir, I can't say whether I saw the ad or saw a write-up about it in The Advertiser or just what.

Q. Well, that's just what I want to ask you. Could it have been that what you saw was some comment about this ad in another newspaper, for example, let us say, The Montgomery Advertiser?

A. That's possible. Yes, sir.

Q. That's possible?

A. Yes, sir.

Q. Did you form any judgment or opinion at the time you saw or do you have any recollection that you formed any judgment and opinion at the time you saw the comment or whatever it was you saw in the article about this ad?

A. No, sir.

Q. You didn't form any judgment about it at all?

A. No, sir.

Q. When you were shown this ad and your attention was directed to these statements in it you say that the statements wherein "When the entire student body protested to state authorities by refusing to re-register, their dining hall was padlocked in an attempt to starve them into submission," that that was associated in your mind with Commissioner Sullivan and the City Government?

A. No, sir. If that were true—if that statement were true, then I would assume that the Commissioner and the police of the city government was acting without jurisdiction but under my present opinion, knowing the facts as I do, I certainly could not believe that to be true.

Q. Well, I don't maintain that it is true.

A. Well, my opinion is based on the fact—

Q. What?

A. My opinion is based on the fact that if that were true—

[fol. 1744] Q. Well, maybe you misunderstood my question. I am not contending that that is true. I am simply asking you that when you read that ad that you tell us there is associated in your mind with it the City Government and Commissioner Sullivan?

A. The Police force and the Commissioners. Yes, sir.

Q. And that—

A. I would assume that the Commissioner had ordered the police force to do that and therefore it would be his responsibility.

Q. And that's by reading this section "When the entire student body—"

A. Yes, sir. Very much.

Q. That's by reading this section "When the entire student body protested to state authorities by refusing to re-register, their dining hall was padlocked in an attempt to starve them into submission," and that is what associated itself in your mind with Commissioner Sullivan and the City Government.

A. Yes, sir.

Q. Let me ask you this. Did he ask you anything about this other section here?

A. Yes, sir. He asked about this whole paragraph here and my statement was as to "They have arrested him seven times for 'speeding,' 'loitering' and similar 'offenses,'" and in my opinion here, this refers to the police force but the sentences above that I cannot associate with the police force at all.

Q. Well, as a matter of fact, that man has been arrested here for some of these offenses, hasn't he?

A. Well, I would assume so. I have heard of him being arrested but whether he has been arrested seven times or not—I am sure he has been arrested though.

Q. Well, I think the facts are as we have had them disclosed that he has been arrested four times but he has been

arrested and that's your understanding, isn't it? Isn't that right?

A. Yes, sir. That's right.

Q. Now, let's take this statement, "And now they have charged him with 'perjury'—a felony under which they could imprison him for ten years," that that associated in [fol. 1745] your mind—that statement with Commissioner Sullivan?

A. No, sir. If I did I was incorrect in that because that doesn't imply the police force to me.

Q. I believe those were the two sections that you were asked about on direct examination.

A. Yes, sir. That's right.

Q. Mr. Blackwell, you are not testifying to this jury that you think any less of Mr. Sullivan from what you read in that advertisement, are you?

A. No, sir. I certainly did not.

Q. Now, in connection with your business, how long have you been engaged in the real estate insurance business in Montgomery?

A. I went into the real estate business in September of 1957 and I have been in the insurance business in the capacity of a general agent since about June of 1958 and prior to that time I was an agent with Mutual of New York for two years and prior to that time two years with the Farm Bureau.

Q. Has either Mr. Nachman's firm or Mr. Whitesell's firm ever represented you on any business?

A. No, sir.

Q. They have had no connection with any of your business—

A. No, sir.

Q. Was that the first time you had ever been in Mr. Nachman's office?

A. Yes, sir. It was. Not long ago, he spoke to our P.T.O. organization and I believe that is the first time I had seen him other than just passing on the street or something like that.

Q. As a matter of fact, Mr. Blackwell, while you were talking about what was set out in this ad, isn't it a matter of common knowledge in and around Montgomery that what

Q. And if you see the police operating in and around the City of Montgomery, the Chief send them around and tells them what to do, doesn't he?

A. Well, I am not too familiar with that but I assume it would be his responsibility also.

Q. That's all. Thank you very much, sir.

[fol. 1748] WILLIAM H. MACDONALD, having been duly sworn, was called as a witness for the plaintiff and testified as follows:

Direct examination.

By Mr. M. R. Nachman, Jr.:

Q. State your name to the Court and jury, sir.

A. William H. MacDonald.

Q. Do you live in Montgomery, Alabama, Mr. MacDonald?

A. Yes, sir.

Q. I believe you have an editorial position with the Montgomery Advertiser. Is that correct, sir?

A. Assistant Editor of The Montgomery Advertiser.

Q. Assistant Editor?

A. Yes, sir.

Q. How long have you been there? How long have you been with the Montgomery Advertiser?

A. For about twelve years.

Q. Now, going back to March 6th of this year, 1960, Mr. MacDonald, did you have occasion to observe a demonstration or a near riot that took place on Dexter Avenue on Sunday, March 6th?

Mr. Embry: Your Honor, we object to that question. That brings an issue into the case that is not an issue in this case. We will have to spend a couple of days on that sort of thing if we go into what happened or what is supposed to have happened at these various other spots and it is not an issue in the case—

Mr. Nachman: Your Honor, if this defendant—I don't know how the other defendants feel about it—but if this

defendant is prepared to concede that all of the matters we quoted in the complaint are false then we will be—

Mr. Embry: Well, Your Honor, Mr. Nachman knows that is not a proper statement to make—

The Court: Well, let me go on and hold that the question is admissible and give you an exception.

Mr. Embry: Sir!

[fol. 1749] The Court: Let me hold that the question is admissible and give you an exception.

Mr. Embry: Well, I had better state my grounds of objection then, Your Honor.

The Court: Go ahead.

Mr. Embry: We object to the question because there has been no issue made on the plea of truth as to the recitation of facts set out in the advertisement complained of and therefore there is no occasion for the testimony of this witness as to what may or may not have occurred at any one of these places of times that has been mentioned in the advertisement.

Mr. Beddow: Your Honor, I don't think this lawyer has any right to ask this witness something in connection with a near riot. That there was a near riot is probably a figment of his imagination and—

Mr. Nachman: Your Honor, if Mr. Beddow will read the interrogatories he will see—

The Court: Well, I was about to rule with you—

Mr. Nachman: They said that a near riot was averted—

Mr. Embry: So it was averted. So what? Your Honor, we also want to object on the further grounds that we have not made the issue by putting on testimony as to the affirmative truth of these statements and until that is done they have no right to call a witness to show that it is presumably false under the allegation.

The Court: I will give you an exception. Go ahead.

Lawyer Gray: We adopt the same objections and let the Record so indicate, Your Honor.

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. You may answer the question. Were you present—

A. I was present.

Q. Am I correct in stating that that was on a Sunday?
A. It was on a Sunday, yes.
Q. In early March?
A. In early March. March 6th.
[fol. 1750] Q. I show you two photographs and ask you to look at these and ask you whether they correctly portray the events that took place there and conditions as you observed it on that day, March 6th, 1960?

Mr. Embry: Your Honor, we want to object to this line of testimony on the grounds previously assigned and on the additional ground that that is not an occasion referred to in the ad anyway.

Mr. Nachman: Your Honor, it is mentioned specifically in their answers to the interrogatories and Mr. Sitton's memorandum. The memorandum discusses the activities that took place there on that date. Now, presumably, when The New York Times answered these interrogatories they thought that it was relevant to discuss what happened on the 6th of March and so we—

Mr. Embry: Now, Your Honor, that offends my sense of fair play and justice. That is unfair and I want to make a reply to that.

Mr. Nachman: We simply feel that we have a right and we think the Alabama cases give us a right to develop fully matters that they have gone into on the answers to the interrogatories and they filed this memorandum by Mr. Sitton and it goes into what happened on the 6th of March and we want to ask him about it.

Mr. Embry: As Your Honor will recall, the answer to that particular interrogatory—before any plea was filed there was an objection stated in the case and Your Honor required us to answer that question on the theory that it might become relevant evidence under a plea of truth. We were required to answer that under the law. The statute required us to answer the interrogatory but when he said we made an issue by answering—we did what the law required us to do and in those answers we gave every bit of information that we had gotten from others about those events but this case is concerned with something recited in this advertisement, if the Court please, about the Capitol

steps or the singing of the song, "My Country, 'Tis of Thee" on the Capitol steps and the evidence that has already been introduced shows that didn't occur and he is asking this witness to testify about things that didn't occur and we object to it for that reason.

[fol. 1751] Mr. Nachman: Your Honor, this interrogatory—this memorandum was introduced in response to Interrogatory No. 8. Interrogatory No. 8 asked whether investigations were made of the correctness of the statements contained in said advertisement. Now, presumably, when this memorandum was attached which went into the activities on March 6th—the people who prepared the answers felt that they had some bearing on the matters contained in this advertisement because that is all the interrogatory asked about—

Mr. Embry: We didn't feel a thing, Your Honor. Your Honor made us answer them. That's all we are saying.

Mr. Nachman: Nowhere in these interrogatories was it specified that we wanted answers specifically about March 6th. That was volunteered by the Times and was attached to this memorandum. We asked about matters and statements contained in the advertisement.

Mr. Embry: We didn't introduce these interrogatories, if the Court please.

The Court: How do you connect these purported photographs up with the ad?

Mr. Nachman: We connect them up, Your Honor, with matters that they went into in answering the interrogatories. They attached in answer to three interrogatories, I believe, Mr. Sitton's memorandum and one of the items in this memorandum reads this way: "March 6th. Authorities narrowly averted a riot when adult Negroes and a few students sought to march on the Dexter Avenue Baptist Church to the Capitol two blocks away to hold a prayer meeting on the Capitol steps. The demonstration was designed to protest the expulsion of nine student leaders." All in the world we propose to do by this testimony, Your Honor, is to present an eye-witness account of what took place on that date that they had brought in in answering these interrogatories.

Mr. Embry: We haven't denied that any such event took place. Your Honor, there is no issue about that—

The Court: How do you connect up this near riot with this?

Mr. Nachman: Only, Your Honor, in that they seemed to [fol. 1752] feel that the events on March 6th had something to do with the matters contained in the ad because we asked in 8 and 9 and 12, I believe, and we even quoted the portions of the ad we were suing on and they attached this. For example, No. 12: "All the knowledge of the defendant with respect to the truth or falsity of the statements contained in the advertisement referred to and contained in documents attached hereto as Exhibits 'A' and 'B' and so forth."

The Court: Well, let's get away from the ad and let's get back to the pleadings. That's the basis of everything—

Mr. Nachman: Well, as I said a few minutes ago, Your Honor, I don't know what they mean by this matter of our not being able to go into the falsity of these matters. I don't know whether they mean that they admit that they are false or what. He jumped all over me when I—

The Court: How do you connect this alleged near-riot up with your pleadings and the ad here?

Mr. Baker: I think we might call on counsel for The Times for a stipulation as to the specific fact—

Mr. Embry: You can call on us for anything you want to call on us for.

Mr. Baker: Well, I think that's exactly what we are doing. We are calling on you—

The Court: I rather believe the pictures would not be admissible.

Mr. Nachman: Your Honor, I don't want to burden the Court but is it also Your Honor's ruling that it is not proper to go into the events—

The Court: The near-riot up at the Capitol, yes.

Mr. Nachman: That was the purpose of Mr. MacDonald's testimony, Your Honor. I will ask him another question or two though.

The Court: Go ahead.

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. I show you two other photographs and ask you what [fol. 1753] they portray and if they portray accurately what you say they portray?

Mr. Beddow: Just a minute! Don't answer that. We object to that question on the grounds that it calls for incompetent, illegal, irrelevant and immaterial testimony and it would have no probative value nor does it throw any light on any of the issues embraced within the Complaint and it deals with a different and separate matter other than the matters involved in the Complaint—

The Court: This question relates to what?

Mr. Nachman: The singing.

Mr. Beddow: And furthermore, we would like you to be courteous enough to us to let us see these photographs before you hand them to the witness.

Mr. Nachman: Here they are, sir.

Mr. Beddow: You don't have them marked and we don't know what you are referring to and we would at least want to see them first.

Mr. Nachman: Here they are, sir. Your Honor, I just asked Mr. MacDonald what they referred to and I will state that we are offering them or that we propose to offer them as pictures of the singing on the 1st of March on the 29th of February—

The Court: Was that singing at the Capitol?

Mr. Nachman: That's correct.

The Court: I have the idea that they are not admissible.

Mr. Beddow: Sir?

The Court: I say, I think they are not admissible. You may have the Court Reporter mark them.

Mr. Nachman: Your Honor, we offer these and we make an offer of proof of these as portraying the singing on the Capitol steps which is described in the ad.

Lawyer Crawford: We will object to his making an offer of proof in front of the jury and in the presence of the jury, if the Court please.

The Court: I will let him make the offer and give you an exception.

Lawyer Gray: It has the same effect, if the jury hears it, [fol: 1754] Your Honor—

Mr. Nachman: Well, we can make the offer later then when the jury is not present at the next break.

The Court: All right. Go ahead. Any further questions for this witness?

Mr. Nachman: No further questions, Your Honor.

HARRY W. KAMINSKY, having been duly sworn, was called as a witness for the Plaintiff and testified as follows:

Direct examination.

By Mr. M. R. Nachman, Jr.:

Q. This is Mr. H. W. Kaminsky?

A. Yes, sir.

Q. Do you live in Montgomery, Alabama, Mr. Kaminsky?

A. Yes, sir.

Q. How long have you lived here in Montgomery, Mr. Kaminsky?

A. For about forty years, sir.

Q. What is your occupation and business here in Montgomery, Mr. Kaminsky?

A. Sales Manager at the Hub Clothing Store here in Montgomery.

Q. You have been there for some little time, have you not?

A. Yes, sir.

Q. Are you acquainted with Mr. Sullivan, the plaintiff in this case?

A. Yes, sir.

Q. Now, Mr. Kaminsky, I show you this ad which is in evidence as Plaintiff's Exhibit No. 347 and I ask you whether you have seen this before and specifically whether one of the occasions was in my office?

A. That's where I saw it. Yes, sir.

Q. I call your attention to the third paragraph in the left hand column which begins, "In Montgomery, Alabama, after students sang 'My Country, 'Tis of Thee' on the State Capitol steps, their leaders were expelled from school, and truckloads of police armed with shotguns and tear-gas

[fol. 1755] ringed the Alabama State College Campus. When the entire student body protested to State authorities by refusing to re-register, their dining hall was padlocked in an attempt to starve them into submission."

A. Yes, sir.

Q. Are you familiar with the statement and matters contained in that paragraph? Do you want to familiarize yourself with it?

A. Yes, sir. I would like to look at it for a minute.

Q. Now, Mr. Kaminsky, do you associate the statements and material contained in that paragraph that I have just showed you with any person or persons?

Mr. Embry: Your Honor, may we have the same grounds of objection previously assigned—

The Court: Yes, and you may have your exception.

Mr. Embry: We except.

Lawyer Crawford: We have the same objection and exception, if the Court please.

Mr. Nachman: And anything that you may want to dictate later into the Record.

The Court: Go ahead.

Mr. Nachman: You may answer.

The Witness: Yes, sir.

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Who are the person or persons with whom you associate the matters contained in that—

A. I would say the City Commissioner of Montgomery. The Commissioners.

Q. Would you include Mr. Sullivan?

A. Mr. L. B. Sullivan, yes.

Q. If you believed the statements contained in that paragraph to be correct, Mr. Kaminsky, would that affect in any way your opinion of the Police Commissioner?

Mr. Embry: Same objection and same exception, if the Court please.

[fol. 1756] The Court: Yes. Go ahead.

Lawyer Crawford: Same objection and exception.

The Witness: Yes, sir.

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. In what way would it affect it?

A. Well, if I believed that, I couldn't go along with that. If Mr. Sullivan would do a thing like that, I couldn't go along with his thinking.

Q. Now, I call your attention to the last paragraph in the second column of this ad which begins, "Again and again the Southern violators have answered Dr. King's peaceful protests with intimidation and violence. They have bombed his home almost killing his wife and child. They have assaulted his person. They have arrested him seven times—for 'speeding,' 'loitering' and similar 'offenses.' And now they have charged him with 'perjury'—a felony under which they could imprison him for ten years," and I ask you to look at that and tell us whether you are familiar with the statements contained there? Just look at it.

A. Yes, sir.

Q. Now, I ask you the same question again, sir. Do you associate the matters contained in that paragraph with any person or persons?

A. Well, I would say that it refers to the same people in the paragraph that we look at before.

Q. The Commissioners?

A. Yes, sir.

Q. Including Mr. Sullivan?

A. Yes, sir.

Q. Once again, sir, if you believed those statements to be true, would your opinion of the Commissioner be affected?

A. My answer would be the same.

Q. Your answer would be the same?

A. Yes, sir.

Q. All right, sir. That's all.

[fol. 1757] Cross examination.

By Mr. T. Eric Embry:

Q. You never did believe the statements were true, did you, Mr. Kaminsky?

A. No, sir.

Q. When was the first occasion you saw this ad, Mr. Kaminsky?

A. I saw it in Mr. Nachman's office.

Q. About three or four weeks ago?

A. Approximately that. Yes, sir.

Q. Did he call you and ask you to step up to his office?

A. Yes, sir.

Q. Did he tell you when he called you what he wanted to see you about?

A. He said he would like to talk to me about it.

Q. About the ad?

A. Yes, sir.

Q. And I guess that's what he did talk about, isn't it?

A. Yes, sir.

Q. Did he have the ad before him that he showed you on that occasion?

A. Yes, sir.

Q. Now, as I understand your testimony, you did not read this advertisement when it appeared in the newspaper, did you?

A. No, sir.

Q. Sir?

A. No, sir.

Q. When you went to his office he had asked you if you would be willing to testify in Mr. Sullivan's behalf about the matters he has asked you about here today.

A. That's right.

Q. And your testimony is that this language, "In Montgomery, Alabama, after students sang 'My Country, 'Tis of Thee' on the State Capitol steps, their leaders were expelled from school, and truckloads of police armed with shotguns and tear-gas ringed the Alabama State College Campus. When the entire student body protested to state authorities by refusing to re-register, their dining hall was [fol. 1758] padlocked in an attempt to starve them into submission." In your mind you associated that statement about starving somebody into submission and padlocking the dining hall with Commissioner Sullivan.

A. The question he asked me was about the whole paragraph we read and that was my answer that I did.

Q. You thought it—

A. Did implicate Commissioner Sullivan and the other Commissioners.

Q. And the other Commissioners and the populace of the City of Montgomery?

A. I didn't say that. No, sir.

Q. Well, I am asking you.

A. No, sir.

Q. You don't think so?

A. No, sir.

Q. What statement—

Mr. Nachman: I didn't get that now. What? Was that his answer? Did he say no?

Mr. Embry: He said that he didn't say that he thought it associated in his mind the entire populace of the City and that he associated in his mind—he associated it in his mind with the City Commissioners.

By Mr. T. Eric Embry: (Continuing)

Q. What statements in there led you to form that conclusion, Mr. Kaminsky?

A. Well, the whole thing there. "In Montgomery, Alabama, after students sang 'My Country, 'Tis of Thee' on the State Capitol steps, their leaders were expelled from school, and truckloads of police armed with shotguns and tear gas ringed the Alabama State College Campus." I didn't believe those statements.

Q. You didn't believe it to be true when you read it, did you, Mr. Kaminsky? After Mr. Nachman showed it to you—

A. No. I don't think Commissioner Sullivan would do that. I didn't think that.

[fol. 1759] Q. You don't think any the less of him by virtue of the fact that this appeared in this advertisement, do you?

A. I don't think the less of who?

Q. Of Mr. Sullivan. Excuse me.

A. No.

Q. Sir?

A. No, sir.

Q. Do you associate in your mind by association that

this refers to Mr. Sullivan when the language is "After students sang 'My Country, 'Tis of Thee' on the State Capitol steps, their leaders were expelled from school"? Does that call to your mind—does Commissioner Sullivan become associated with that in your mind when somebody is expelled from school? The City Commissioner of the City of Montgomery—

A. No, I can't say I do.

Q. And when it says "Truckloads of police armed with shotguns and tear-gas ringed the Alabama State College Campus" do you associate that statement in your mind—do you associate that statement or event with Commissioner Sullivan which you knew was not true?

A. Well, that part does associate Commissioner Sullivan with the police because he is the Police Commissioner.

Q. Does it associate in your mind Commissioner Sullivan there with the police when it says "Police armed with shotguns and tear-gas ringed the Alabama State College Campus," that associated Commissioner Sullivan with that statement about the police?

A. That's right.

Q. Do you know whether or not the City of Montgomery has a Chief of Police?

A. Yes, sir.

Q. Do you know whether or not the City of Montgomery has Captains and Lieutenants of Police?

A. Yes, sir.

Q. Have you ever seen Commissioner Sullivan dispatch any of the police anywhere?

A. I can't say I have. No, sir.

[fol. 1760] Q. He has other duties than those connected with the operation of the police force, does he not?

A. Yes, sir.

Q. Is that same thing true with the paragraph that was called to your attention by Mr. Nachman that says, "Again and again the Southern violators have answered Dr. King's peaceful protest with intimidation and violence. They have bombed his home almost killing his wife and child. They have assaulted his person. They have arrested him seven times—for 'speeding,' 'loitering' and similar 'offenses.' And now they have charged him with 'perjury'—a felony

under which they could imprison him for ten years." Do you associate in your mind or did you—

A. I can't say that I did. No, sir.

Q. That Mr. Sullivan was a Southern violator? You didn't believe that, did you?

A. No, sir.

Q. Or that he ever had anything to do with bombing anybody's home if that were true or not true.

A. No, sir.

Q. How about the phrase "They have assaulted his person. They have arrested him seven times—for 'speeding', 'loitering' and similar 'offenses'". Does that call to your mind Commissioner Sullivan?

A. Well, it implicates the Police Department, I think, or the authorities that would do that—arrest folks for speeding and loitering and such as that.

Q. Do you know whether this man King has ever been arrested or has ever been arrested in Montgomery?

A. No, sir. I won't say that I do.

Q. Have you ever read a newspaper or a magazine that the police had assaulted some person or beat them up on the streets of Montgomery and would you immediately associate that statement if it was made in a publication or a newspaper with Commissioner Sullivan? Do you think that he is responsible for the police having beat somebody up or assaulted them on the streets of Montgomery?

A. I still say he is the Police Commissioner and those [fol. 1761] men are working directly under him and therefore I would think that he would have something to do with it.

Q. Well, of course, sir, his job is being the Commissioner of Police of the City of Montgomery.

What I am asking you now is if in your mind if you read a statement that a police officer of the City of Montgomery had beaten somebody on the street or had assaulted them and that statement appearing in print, would that statement call to your mind and associate Commissioner Sullivan in your mind with the fact that a policeman had been charged with committing a wrong act by assaulting somebody on the streets of Montgomery?

A. I don't know whether I—

Q. If you read of a policeman committing a crime in the City of Montgomery, would you associate that with Commissioner Sullivan as in your mind referring to Commissioner Sullivan as being responsible for the commission of a wrongful act by a policeman or the commission of a crime by a policeman in the City of Montgomery because he is the Police Commissioner?

A. I think you would have to look at him to a certain extent. Yes, sir.

Q. Well, if a statement is made about misconduct on the part of a policeman, whether it is true or false, in your mind that's associated with the charge that he is responsible for it and he is a miscreant in the discharge of his duties and is not conducting his office properly if a policeman commits a wrong in the City of Montgomery?

A. Well, I—

Q. Is that a fair statement of what you—

A. Well, I kind of put myself on that spot. If anything goes wrong in the establishment where I am the sales manager they look at me for the acts of the men under me.

Q. I don't believe you understand me correctly. You are ultimately responsible for the operation of your business.

A. Yes.

Q. That's what you are now speaking of.

[fol. 1762] A. Yes.

Q. And Commissioner Sullivan is ultimately responsible under the law for the operation of the Police Department—

A. Yes, sir.

Q. And for the operation of the Cemetery Department and something else—the Fire Department. Is that right? He is responsible for the operation of the Jail in the City of Montgomery—

A. I think he said Scales.

Q. That's right. Not the Jail. Scales. In the City of Montgomery.

A. That's right.

Q. And that is the type of thing that is called to your mind when you read about police activity—his ultimate job in the City of Montgomery. Isn't that correct? Is that a fair comparison?

A. I look at Mr. Sullivan when I see the Police Department. Yes, sir.

Q. Is that a good comparison? Am I drawing you a fair comparison between the type of association in your mind that you associate with your responsibility in your business to your employers with Mr. Sullivan's responsibility in his conduct in the operation of the affairs of the City of Montgomery in the affairs of the operation of the Police Department, the Fire Department, the Department of Cemeteries and Scales? Is that similar in your mind?

A. I would think so.

Q. All right. If you read a statement in a newspaper that one of your employees was guilty of rape on the streets of Montgomery and had been arrested and indicted for raping someone on the streets of Montgomery, would it seem to import to you that you were being charged with misconduct and that you were somehow responsible for the conduct of your employee for raping someone on the streets of Montgomery?

Mr. Nachman: If the Court please, that is pure argument and he has been arguing with Mr. Kaminsky for the last four or five minutes. He has been going over and over this testimony trying to get him to say that he doesn't hold Police Commissioner Sullivan responsible for the activities of policemen and he is just arguing with Mr. Kaminsky—

The Court: Well, it is Cross Examination and he has [fol. 1763] leeway there. I will give you an exception. Go ahead.

Mr. Embry: Did you answer the last question, Mr. Kaminsky?

The Witness: I didn't answer it.

Mr. Embry: Read the question, Mr. Reporter.

The Reporter: Question: "All right. If you read a statement in a newspaper that one of your employees was guilty of rape on the streets of Montgomery and had been arrested and indicted for raping someone on the streets of Montgomery, would it seem to import to you that you were being charged with misconduct and that you were somehow responsible for the conduct of your employee for raping someone on the streets of Montgomery?"

Mr. Embry: Would that to your mind associate the charge of an employee of yours having committed a crime

with charging you with misconduct?

The Witness: It probably wouldn't concern me myself but I can't say what it would cause somebody else to think.

By Mr. T. Eric Embry: (Continuing)

Q. Well, of course, we have been only inquiring about what you were caused to think or what your mental associations were. Now, did Mr. Nachman discuss this proposition we are now talking about and discuss with you and suggest to you that the Commissioner's responsibility for the overall operation of the police affairs of the city would indicate a reference to him in this ad when it discusses the activities of the police?

A. I don't think Mr. Nachman did. No, sir.

Q. Did you discuss that with him at that time in his office?

A. As best I can remember, we didn't do it.

Q. You did not discuss that.

A. No, sir.

Q. I believe you did not see this advertisement before that occasion in Mr. Nachman's office. Am I correct in that statement?

A. You are right. Yes, sir.

Q. And you have not read it in The New York Times?

[fol. 1764] A. That's right.

Q. Do you subscribe to The New York Times?

A. No, sir.

Q. Do you buy it on the news stand?

A. No, sir.

Q. Have you ever seen it offered for sale on the news stands?

A. No, sir. I don't believe I have.

Q. How long have you been acquainted with Mr. Sullivan, Mr. Kaminsky?

A. I would say since 1950 or around that time.

Q. Was that when he was connected with the State administration under Governor Persons?

A. Yes, sir.

Q. You did not know him when he first came to Montgomery, I presume.

A. No.

Q. As a matter of fact, you were one of his supporters in his race for the City Commission job, were you not?

A. Yes, sir.

Q. And you are rather close friends, are you not?

A. Yes.

Q. I believe you have had occasion to be in contact with him socially on frequent occasions or from time to time, have you not?

A. Well, I—

Q. At parties and gatherings?

A. Yes.

Q. Now, you didn't believe anything in there referring to Mr. Sullivan charging him with—first of all, you didn't believe anything in that ad when Mr. Nachman showed it to you, did you, or that it was true—

A. I didn't believe it about him. No, sir.

Q. And you think just as much of him now as you did before you saw that in Mr. Nachman's office, do you not?

A. Yes, sir.

Q. All right, sir. That's all.

Lawyer Crawford: No questions.

[fol. 1765] H. M. Price, Sr., having been duly sworn, was called as a witness of the Plaintiff and testified as follows:

Direct examination.

By Mr. M. R. Nachman, Jr.:

Q. Will you state your name, please?

A. H. M. Price, Sr.

Q. Do you live in Montgomery, Alabama, Mr. Price?

A. Yes, sir.

Q. What is your business here in town?

A. Well, we have a little business—the food equipment business.

Q. Are you acquainted with the plaintiff in this case, Mr. Sullivan?

A. Yes, sir.

Q. Mr. Price, I show you Plaintiff's Exhibit No. 347

which is an advertisement and I call your attention to the third paragraph down on the left hand column where it says "In Montgomery, Alabama, after students sang 'My Country, 'Tis of Thee' on the State Capitol steps, their leaders were expelled from school, and truckloads of police armed with shotguns and tear-gas ringed the Alabama State College Campus. When the entire student body protested to state authorities by refusing to re-register, their dining hall was padlocked in an attempt to starve them into submission." I also call your attention to this paragraph: "Again and again, the Southern violators have answered Dr. King's peaceful protests with intimidation and violence. They have bombed his home almost killing his wife and child. They have assaulted his person. They have arrested him seven times—for 'speeding,' 'loitering' and similar 'offenses.' And now they have charged him with perjury—a felony under which they could imprison him for ten years." Now, having looked at the ad, are you familiar with those?

A. I am familiar with them. Yes, sir.

Mr. Embry: For the Record, Your Honor, we have our same objections and exceptions?

The Court: Yes.

Lawyer Crawford: Same objection and exception.

[fol. 1766] The Court: Yes. Go ahead.

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Mr. Price, did it—when you read the statements contained in those two paragraphs, do they associate themselves in your mind with any person? Those statements of events?

A. Certainly.

Q. With whom?

A. I would say the head of the Police Department.

Q. Who is that?

A. Mr. L. B. Sullivan.

Q. Mr. Price, if you believed the statements contained in those two paragraphs to be true, regardless of whether you think them to be true, if you believed them to be true, would that affect your opinion of Mr. Sullivan—

Mr. Embry: Same objections, if the Court please.

The Court: Yes. Same ruling.

Mr. Embry: We except.

Lawyer Crawford: We except, Your Honor.

The Witness: I don't think there is any question about what I would decide. I think I would decide that we probably had a young Gestapo in Montgomery.

Mr. Nachman: That's all.

Mr. Embry: Your Honor, we move that last answer be stricken as not responsive—

The Court: Well, a shorthand rendition of an alleged fact probably—I will let it in and give you an exception.

Mr. Embry: We except.

Lawyer Gray: Same exception.

Cross examination.

By Mr. T. Eric Embry:

Q. Mr. Price, were you subpoenaed to appear here today?

A. No, sir.

[fol. 1767] Q. Who asked you to come up here and testify?

A. Mr. Sullivan's lawyers.

Q. Mr. Nachman?

A. Yes, sir. Mr. Nachman.

Q. Do you know Mr. Sullivan personally?

A. Yes, sir.

Q. How long have you known him?

A. Oh, I have known Mr. Sullivan for several years.

Q. Do you live near him?

A. Well, not too close.

Q. Have you known him ever since he has been a resident of Montgomery?

A. I don't think I have known him ever since he has been a resident and frankly I don't know how long he has been a resident here in Montgomery.

Q. Did you know him when he was connected with the Persons Administration?

A. That's right. I believe he was with the State.

Q. He was the State Safety Director, was he not?

A. That's right and later he was with some of the transportation companies or some association with freight lines.

Q. What in this ad that your attention was directed to by Mr. Nachman made you think of Mr. Sullivan? What words in it made you think of him when you read it and when you went over it with him?

A. Well, may I read this to you in order to qualify what I think about it?

Q. Yes, surely. Go ahead.

A. It says here, "In Montgomery, Alabama, after students sang 'My Country, 'Tis of Thee' on the State Capitol steps, their leaders were expelled from school, and truckloads of police armed with shotguns and tear-gas ringed the Alabama State College Campus." Now, I would just automatically consider that the Police Commissioner in Montgomery would have to put his approval on those kind of things as an individual.

Q. You didn't believe that statement you just read that Mr. Nachman showed you—you didn't believe that it was true, did you?

[fol. 1768] A. I knew it wasn't true. I satisfied myself about that.

Q. You never thought it was true or had any idea that it was true, did you?

A. No, sir, but if I had known it was true—

Q. I assume and I will ask you if I am correct in my assumption—you think a lot of Mr. Sullivan, don't you?

A. Oh, yes. I do.

Q. And you have thought a lot of him for a long time, have you not?

A. That's right.

Q. You don't think any less of him now after having that article shown to you by Mr. Nachman, do you?

A. Certainly I do not because it is not correct.

Q. And you still think so, do you not?

A. Yes, sir.

Q. When you first saw this advertisement—when was that? Was that in Mr. Nachman's office?

A. Yes. That is right.

Q. Do you recall about when?

A. Oh, possibly three or four weeks ago. Is that approximately right, Mr. Nachman?

Mr. Nachman: I'm sorry, I can't answer you.

Mr. Embry: Well, I wouldn't object to that.

The Witness: Well, I want to give you as correct an answer as possible.

Mr. Embry: Well, I am sure of that, sir.

By Mr. T. Eric Embry: (Continuing)

Q. Was that after he asked you to come up to his office or did he see you on the street and ask you to come by?

A. Frankly, I don't recall.

Q. But it was at his office then.

A. Yes. In fact, I had taken quite a bit of interest in this thing and actually had talked to some other people who had seen it and I saw copies of the two paragraphs myself prior to that time.

[fol. 1769] Q. Prior to then?

A. Yes, sir.

Q. Do you recall who showed them to you?

A. Some friend of mine. I discussed it quite at some length with people in Montgomery but I don't recall the man's name.

Q. Well, the first time you saw this was when it apparently appeared in the newspaper and was that at Mr. Nachman's office?

A. The first time I saw this ad was in Mr. Nachman's office. The ad in the paper was in Mr. Nachman's office. Yes, sir.

Q. Did you discuss with him at that time the question of testifying in this case about the matters you have testified about?

A. Sure.

Q. That was the purpose of looking at the ad, wasn't it?

A. Sure.

Q. And had you discussed it before this time—you told me that you had talked about these matters. Had you talked about this litigation—this law suit?

A. No, No. I haven't discussed the law suit in particular.

Q. Mr. Sullivan's law suit I am talking about.

A. No, sir. I haven't discussed it particularly.

Q. All right, sir. That's all.

Lawyer Crawford: No questions.

WILLIAM M. PARKER, JR., having been duly sworn, was called as a witness for the Plaintiff and testified as follows:

Direct examination.

By Mr. M. R. Nachman, Jr.:

Q. State your name, please.
A. William M. Parker, Jr.
Q. Do you live in Montgomery, Mr. Parker?
A. Yes, sir.
[fol. 1770] Q. What is your business here?
A. Service Station.
Q. In Montgomery, Alabama?
A. Yes, sir.
Q. How long have you lived here, Mr. Parker?
A. All of my life.
Q. Are you acquainted with Mr. Sullivan, the plaintiff in this case?
A. Yes, sir.
Q. Mr. Parker, I show you here this advertisement in The New York Times identified as Plaintiff's Exhibit No. 347. Am I correct, sir, in stating that you have seen this before in my office?
A. Yes, sir.
Q. I will ask you to look at these paragraphs and I will read them as follows: "In Montgomery, Alabama, after students sang 'My Country, 'Tis of Thee' on the State Capitol steps, their leaders were expelled from school, and truckloads of police armed with shotguns and tear-gas ringed the Alabama State College Campus. When the entire student body protested to state authorities by refusing to re-register, their dining hall was padlocked in an attempt to starve them into submission," and now this paragraph, "Again and again the Southern violators have answered Dr. King's peaceful protests with intimidation and violence. They have bombed his home almost killing his wife and child. They have assaulted his person. They have arrested him seven times—for 'speeding,' 'loitering' and similar 'offenses.' They have charged him with perjury—a felony under which they could imprison him for ten

years." Look at the contents of those paragraphs and refresh your recollection about them, if you will, sir.

Mr. Embry: Do we have the same objections about the same statement about who is associated in his mind and if he believed—

The Court: Yes.

Mr. Embry: The same objections and exceptions.

Lawyer Crawford: Same objection and same exception.

The Court: Yes. Go ahead.

[fol. 1771] By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Have you looked at them?

A. Yes, sir.

Q. Mr. Parker, do you associate those statements contained in those paragraphs with any person or persons that you know or are acquainted with?

A. Yes, sir.

Q. With whom?

A. All persons or just one person?

Q. Well, name a particular person.

A. I would the—I would associate them with Mr. Sullivan, Mr. James and Mr. Parks.

Q. They are the Commissioners of the City of Montgomery.

A. Yes. They are the Commissioners of the City of Montgomery.

Q. Mr. Parker, on the assumption that you believed those to be true, whether you do or not, but if you did believe them to be true, the statements I have just read, would that affect your opinion of Mr. Sullivan, and if so, state how.

A. Yes, it would.

Q. In what way?

A. It certainly would. I would think Mr. Sullivan would be trying to run this town with a strong arm—strong armed tactics, rather, going against the oath he took to run his office in a peaceful manner and an upright manner for all citizens of Montgomery.

Q. Mr. Parker, did I or any of my partners, Mr. Baker or Mr. Steiner, represent you in any legal matters?

A. No, sir.

Q. You have talked to me about the case, have you not?

A. Yes, sir.

Q. You have also talked to Mr. MacLeod about the case, have you not?

A. That gentleman there. Yes, sir. I had forgotten his name. Yes, sir.

Q. You have talked to both of us?

A. Yes, sir.

Q. All right, sir. That's all.

[fol. 1772] Cross examination.

By Mr. T. Eric Embry:

Q. You didn't believe anything in that ad, did you?

A. No, sir. I don't.

Q. You didn't think and you don't think any less of Mr. Sullivan on account of what you saw in that ad, do you?

A. I personally, no, sir.

Q. When you saw it, did you immediately think of Mr. Sullivan when you read that?

A. Well, yes, sir. I would think that he and Mr. James and Mr. Parks were working together but since he was the Police Commissioner I thought of him first. Yes, sir.

Q. When you read that did you immediately think of him or is what you are saying is that you associated it with him because you know that he is one of the City Commissioners and that his legal responsibility is the operation of the Fire, Police, Cemetery and Department of Scales.

A. I think if you were the Police Commissioner I would have thought it was speaking of you.

Q. You think that language in there refers to the Police Commissioner.

A. Yes, sir.

Q. I believe you are a friend of Mr. James, the Mayor, are you not?

A. Yes, sir.

Q. Are you a friend of Mr. Sullivan's?

A. Yes, sir.

Q. Do you have a business that sells services or goods such as gasoline and oil products and tires to the city from time to time?

A. I have sold some tires to the city on a State contract basis.

Q. You have had contact with these gentlemen from time to time, have you not?

A. I had before they were elected. Yes, sir.

Q. And since?

A. Yes, sir.

Q. All right, sir. That's all.

Lawyer Crawford: No questions.

[fol. 1773]

COLLOQUY RE INTRODUCTION OF EVIDENCE

Mr. Nachman: Your Honor, these news stories which have been referred to in the interrogatories and especially interrogatory No. 4—they are identified as having been introduced previously which is correct and the pictures have been cut off of some of them—

The Court: What do they relate to?

Mr. Nachman: They are in amplification, Your Honor, of the answer to interrogatories, Interrogatory No. 4, I believe, and it refers to certain newspaper stories by date—

Mr. Embry: Do you have the right one?

Mr. Nachman: We have got some of them. We couldn't find all of them but we do want to introduce the ones that are here and the picture is in the Record already as I understand it.

Mr. Embry: Well, we want to see it and are you going to read it into the Record?

Mr. Nachman: Yes. I am going to read them into the Record and state what they are.

Lawyer Gray: If it please the Court, we want to object to the introduction of this as evidence against these defendants on the grounds that these newspaper articles, as I see them, are not matters that are specifically alleged in the Complaint. Neither are they matters that are specifically referred to—

Mr. Nachman: We will restrict them to The New York Times only, Your Honor.

The Court: All right. They are restricted to the corporate defendant, The New York Times.

Lawyer Gray: All right, sir.

The Court: They are out as to the individual defendants.

Lawyer Seay: Will Your Honor give special instructions to the jury so they will understand that?

The Court: Yes.

Lawyer Crawford: We would like to have each one of those exhibits numbered—

Mr. Embry: They are already numbered.

[fol. 1774] Mr. Nachman: Gentlemen of the jury, this exhibit is already in evidence as Plaintiff's Exhibit No. 168. It is a news story by Claude Sitton which appears in the March 7th, 1960 issue of The New York Times on pages 1 and 14.

Mr. Embry: Your Honor, we are going to have to handle these one by one. This one that he has just identified we object to because it purports to be a story about the demonstration which I will refer to as the "near-riot" that was inquired of the witness, MacDonald, I believe his name was and would not be pertinent to the issues as framed in this case.

Mr. Nachman: Your Honor, this news story is referred to in Interrogatory No. 4. It is referred to in the answers of the defendant, The New York Times, in Interrogatory No. 4. The question was "Please state whether or not The New York Times prior to the publication of the advertisement involved in this suit carried any news stories in its paper or received in its files any news coverage or reports from its reporters, news services or other news gathering media concerning any events or occurrences referred to in said advertisement, and if you answer affirmatively, please attach to your answer to this interrogatory the original or a true and correct copy of each and every said news story" and so on. The answer was, "The New York Times prior to the publication of the advertisement referred to and insofar as this defendant is able to determine from its records had received from its reporters, string correspondents and the news services to which it subscribes news stories relating to certain of the events and occurrences referred to in the advertisement and these stories appeared in defendant's newspapers on the dates of February 18, 1960, March 2, 3, 5, 6, 7, 8,

9, 10, 11, 12, 13, 23, 27, 30 and April 1, 1960. The actual news stories are equally within the knowledge of the plaintiff inasmuch as the same were produced by this defendant in response to this plaintiff's Motion to Produce and were introduced into evidence in this cause on a hearing on this defendant's Motion to Quash service of process herein." So, all we are trying to do, Your Honor, is to introduce the papers which they said were already in evidence and they said that therefore they were excused from [fol. 1775] attaching them to these interrogatories and now they say that they are objectionable.

Mr. Embry: May I be heard, Your Honor?

The Court: Go ahead.

Mr. Embry: Of course, Your Honor, they were admissible under Your Honor's ruling and at the time they were produced it was on a different matter that addressed itself to the Court without a jury. The fact that they were called for by interrogatories and the fact that under the law we were required to give them everything that appeared in our paper about any of these events that had taken place before the pleadings were settled in this case and the issues were framed doesn't make them admissible. I am sure Your Honor is thinking along the same lines I am in this regard. They introduced these answers to the interrogatories but that doesn't make the exhibits admissible unless they are pertinent to the issues.

Mr. Nachman: Your Honor, I don't see how the reference to these news stories could possibly be meaningful without the news stories and in addition to that they clearly show what knowledge and information was at hand to the defendant, The New York Times, on the 7th day of March which it could have consulted or the 29th day of March or the 28th of March or whenever this ad was presented and prepared for publication.

Mr. Embry: Your Honor, there may be some of these in there that are pertinent to these issues on the theory that Mr. Nachman is talking about.

The Court: I believe under Alabama law under Act 375 you have to answer whether the evidence may or may not be admissible. I am sort of judicially skeptical of this No. 168 here.

Mr. Nachman: These were not taken under Act 375, Your Honor.

The Court: I don't believe No. 168 is good. Let me give you an exception to that.

Mr. Nachman: May we make an offer of that or a showing, Your Honor?

The Court: Yes.

[fol. 1776] Mr. Nachman: We make an offer of Plaintiff's Exhibit No. 168 for identification, Mr. Reporter.

(Plaintiff's Exhibit 168, a newspaper article in the Monday, March 7th, 1960 issue of The New York Times captioned "Negroes Dispersed in Alabama March, Special to The New York Times" offered in evidence but disallowed and not received by the Court.)

Mr. Nachman: Now, Your Honor, we would like to offer into evidence next a document which is already in evidence and identified as Plaintiff's Exhibit No. 229 and it is page 23 of the March 8, 1960 issue of The New York Times.

Mr. Embry: Now, Your Honor, we don't object to this one identified as Plaintiff's Exhibit No. 169 as it has to do with some allegation in the Complaint.

(Plaintiff's Exhibit No. 229 being an article in the Tuesday, March 8th, 1960 issue of The New York Times, offered in evidence but disallowed and not received by the Court.)

Mr. Nachman: We will offer as our next exhibit then an article in the March 2nd, 1960 issue of The New York Times, pages 1 and 29 which is already in evidence identified as Plaintiff's Exhibit No. 169.

(Newspaper article appearing in the March 2nd, 1960 issue of The New York Times at pages 1 and 29, captioned "1,000 Negroes Join in March in Alabama" Special to the New York Times, by Claude Sitton, offered and received in evidence and identified as Plaintiff's Exhibit No. 349.)

[fol. 1777] Mr. Embry: Before you read that can we take up the objections to No. 229 and that's on the same basis that it doesn't relate to the allegations—

The Court: Let me see it.

Mr. Embry: We object to it on the same grounds, if the Court please.

Mr. Nachman: Your Honor, would you prefer to hear me on this?

The Court: Well, briefly.

Mr. Nachman: By saying this, Your Honor, I am referring to the story dated March 8th, 1960. This involves the same question as Your Honor has just ruled on.

The Court: Well, I will let the judicial axe fall on that too then. I sustain the objection.

Mr. Nachman: Well, we will offer to make an offer of that then too, Your Honor.

The Court: Very well.

Mr. Nachman: May I read this story to the jury now?

Lawyer Gray: If the Court please, they are only offering that as to The New York Times?

Mr. Nachman: It is limited to The New York Times, yes.

Lawyer Gray: Will your Honor so instruct the jury?

The Court: I will make a note of that.

Mr. Nachman: We offer this strictly as limited to The New York Times and we do not offer it in regard to any of the other defendants.

The Court: Go ahead.

Mr. Nachman: I will read this article aloud to the jury, if the Court please. It is Exhibit No. 349 and is captioned and reads as follows: "1,000 Negroes Join March in Alabama. By Claude Sitton. Special to The New York Times. Montgomery, Alabama. March 1. A thousand Negro stu-
[fol. 1778] dents played and sang the National Anthem today on the steps of the first Capitol of the old Confederacy in a peaceful protest against segregation. Neither the police nor white hoodlums, one of whom attacked a Negro woman with a miniature baseball bat last week-end, attempted to interfere. High State officials watched from the entrance to the building which now serves as Alabama Capitol, with an occasional muttered comment. The likelihood remained that at least some of the demonstrators would be punished. Governor John Patterson has strongly implied that their leaders should be expelled from Alabama State College, and all Negro institutions. He had called initially for the expulsion of all involved. Today marked

the one month anniversary of the passive resistance movement, which began with the lunch counter "sit-in" in Greensboro, North Carolina, and later spread into Virginia, Florida, South Carolina, Tennessee and Alabama. Orderly March Urged. The students gathered at 8:45 A.M. on the Alabama State College Campus. One of their leaders, Elroy Embry warned that "If anyone thinks that they cannot be orderly they can help us better by staying here." Then they set out on the march of more than a mile to the stately colonial building on a hilltop overlooking downtown Montgomery. The students came silently by twos and white helmeted motorcycle policemen roared ahead of the column or sat watchfully along the way. It was Mardi Gras day in Alabama and capitol offices were closed. The students lined up thirty-five abreast on the white marble steps of the front entrance just below the spot where Jefferson Davis took the oath of office as President of the Confederacy ninety-nine years ago. At a word from one youth they bowed their heads and said the Lord's Prayer in unison. Then the students sang "The Star Spangled Banner." The students re-formed into a column of twos and marched back to the campus where they were dismissed by a leader. The demonstration had lasted for twenty-five minutes."

Mr. Nachman: And—

The Court: All right. Call the next witness.

Mr. Nachman: If the Court please, as our next exhibit we would like to introduce another document that is already in evidence identified as Defendant's Exhibit No. 3 which [fol. 1779] we would like to introduce into evidence and have marked by the Court Reporter as our Plaintiff's Exhibit No. 350, which as I understand it is a copy of the Union Advertising Service—

Mr. Embry: We have no objection to it, Your Honor.

Mr. Nachman: This is also limited to the defendant, The New York Times only.

Lawyer Gray: This is being solely as against The New York Times and not against these other defendants.

Mr. Nachman: That's just what I said. That's limited to The New York Times only.

(Order blank for publication of the Union Advertising Service, 302 Fifth Avenue, New York 1, New York, Re: New York Times, dated March 28, 1960, offered and received in evidence and identified as Plaintiff's Exhibit No. 350.)

The Court: All right. Proceed. What is next?

Mr. Nachman: At this time, we want to offer into evidence, if the Court please, as Plaintiff's Exhibit 351 a newspaper article of the Monday, May 16th, 1960 issue of The New York Times at page 22 captioned "Times Retracts Statements in Ad"—

Lawyer Gray: This too is being admitted solely against The New York Times and not against these other defendants?

Mr. Nachman: That's correct. It is limited to The New York Times only. Now, gentlemen of the jury, this next exhibit is a page from The New York Times dated May 16th, 1960 which contained the retraction by The New York Times insofar as Governor Patterson is concerned and we will not read the entire story because it has already been introduced.

(Newspaper article, Monday, May 16th, 1960 of The New York Times, page 22, captioned "Times Retracts Statement in Ad" offered and received in evidence and identified as Plaintiff's Exhibit No. 351.)

Mr. Embry: Your Honor, we are going to object to this one.

The Court: Let me see it. Now, to be consistent, I think we will have to do the same thing with this one.

Mr. Nachman: Your Honor, in reference to admissibility on this one, it shows—

[fol. 1780] Mr. Beddow: If the Court please, we object to that statement in the presence of the jury—

Mr. Nachman: All right. I will not make any statement in the presence of the jury but I would like to be heard on this—

The Court: We are going to stop at this time anyway and then we can go into that after I have dismissed the jury for the night. Gentlemen of the jury, bear in mind

what I have said here today. While you are out tonight, we don't keep you together or furnish you with any meals or anything like that, but don't discuss the case and don't try to make up your mind about it one way or the other. One side has only presented part of its case and the other side hasn't been heard from yet at all and the best thing to do is to just get your mind off of it and forget all about it until tomorrow and be back in the jury box promptly at nine-thirty.

(Entire jury panel leaves Court Room.)

The Court: All right. Go ahead.

Mr. Nachman: Now, Your Honor, we are addressing ourselves to the document identified as Plaintiff's Exhibit No. 352 for identification. Now, we feel, Your Honor, that this reached The Times certainly no later than April 8th, the issue in which it admittedly appeared and it is possible in view of the dateline there that it might have reached the Times on the 7th of April. At any rate, it reached the Times before demand for retraction and we must assume that The Times knows what appears in its newspaper and therefore The Times was aware for at least a week before it answered our demand for a retraction and that sources in Alabama were saying that falsehoods were contained in this advertisement and we introduce this on the grounds that The Times had knowledge of the contention of these people—I believe Mr. McKee's purported investigation—the report of that investigation is dated on the 14th and that all of this information was before The Times and the only thing they said was incorrect was this padlocking when they wrote on the 14th or the 15th or whatever date it was. This is also relevant in terms of what they now will contend or may not contend at this trial regarding the other [fol. 1781] matters which are contained in this ad because when they wrote the ad—when they wrote us rather in April they said that the other matters were substantially correct and this indicates knowledge that they had or could be assumed to have had because of this column which appeared in their newspaper that people down here were contending that other things were incorrect too. We don't offer it for the truth of the matter contained in this thing

but we only offer it as proof that The Times had knowledge that people were contending that these matters were false and that they had that knowledge when they declined to make a retraction. We think it is relevant on the question of malice and knowledge and recklessness.

Mr. Embry: Now, Your Honor, that might put somebody on notice that Mr. Hall was writing something. I think a news story is admissible that purports to be a news story in our paper that purported to cover events that were embraced within the complained of portions of the advertisements. This part here is merely Mr. Hall's argument or a point of view expressed by Mr. Hall.

Mr. Nachman: We think that the fact that a responsible person in Montgomery thought that the ad was false is just as relevant as the fact that a person they contend to be a responsible person in New York thought that it was true. As I said, we don't offer it for the truth of the matter asserted but merely for the fact that they had knowledge that people in Montgomery and responsible people in Montgomery were saying that this matter was false.

Mr. Embry: It goes to our knowledge, Your Honor, and not what Mr. Hall thought.

The Court: What is U P I? Is that the United Press International?

Mr. Nachman: The United Press International, yes, Your Honor.

The Court: I believe I will turn this one down and give you an exception.

Mr. Nachman: Mr. Reporter, for the Record, we make an offer of Plaintiff's Exhibit 352 marked for identifica-
[fol. 1782] tion. Now, Your Honor, we were going to have identified by Mr. MacDonald, the witness, as accurate portrayals of these scenes shown here in these photographs, the demonstrations of singing or however they could be characterized on the 1st of March which is precisely mentioned in this ad. We would offer to show by Mr. MacDonald that these photographs portray scenes on the capitol steps that day and they are very much in the ad—

The Court: Well, Mr. Embry objects and the Court sustains the objection.

Mr. Nachman: On his other oral testimony, Your Honor, we were going to amplify the circumstances and facts on March 6th which event is mentioned in their Answers to the Interrogatories.

Mr. Baker: That being the march from the Dexter Avenue Baptist Church to the Capitol which was stopped by the intervention of the police.

Mr. Nachman: Mr. Reporter, for the Record, we make an offer of these two photographs. They are marked for identification as Plaintiff's Exhibit No. 353 and No. 354.

(Newspaper article, The New York Times, dated April 8th, 1960, captioned "Alabamians Assail Ad Backing Dr. King," datelined Montgomery, Alabama, April 7th, 1960, offered and not received in evidence but disallowed by the Court.)

[fol. 1783] (One photograph, offered but not received in evidence and disallowed by the Court, marked and identified as Plaintiff's Exhibit No. 353 for identification.)

(One photograph, offered but not received in evidence and disallowed by the Court, marked and identified as Plaintiff's Exhibit No. 354 for identification.)

Mr. Embry: Mr. Reporter, I want to add this additional ground to my general grounds to the line of questioning asked of the witness by Mr. Nachman. Also the question calls for—the questions do not call for facts or circumstances of an identifying nature as a predicate to the witness in asking his opinion with reference to the application of the words of the advertisement complained of as applied to the plaintiff.

(At this point Court was recessed and reconvened at 9:30 o'clock A. M., Wednesday, November 2, 1960.)

[fol. 1784] HORACE W. WHITE, having been duly sworn, was called as a witness for the Plaintiff and testified as follows:

Direct examination.

By Mr. Calvin Whitesell:

Q. What is your name, sir?

A. Horace W. White.

Q. What is your occupation, Mr. White?

A. Transportation. The P. C. White Truck Line.

Q. Do you know the Plaintiff in this case, Mr. L. B. Sullivan?

A. Yes, sir. I do.

Q. How long have you known him?

A. For approximately five years.

Q. Now, Mr. White, I show you an ad from The New York Times identified as Plaintiff's Exhibit No. 347 and I will ask you if you have seen that ad before?

A. Yes, sir. I have.

Q. Do you recall when you first saw the ad? Approximately?

A. I don't recall the date, no, sir. It was some few days after it first came out in the paper.

Q. Do you recall how you happened to see the ad?

A. I believe somebody cut it out of the paper and mailed it to me but I don't remember and I am not sure of that but I believe that is right.

Q. Let me ask you this, then. Did I or Mr. Nachman or Mr. Steiner or Mr. Baker or Mr. Sullivan send you this ad?

A. No, sir.

Q. I will ask you if you have read the ad?

A. Yes, sir. I have.

Q. In particular I want to show you this paragraph headed here, "In Montgomery, Alabama, after students sang 'My Country, 'Tis of Thee' on the State Capitol steps, their leaders were expelled from school, and truckloads of police armed with shotguns and tear gas ringed

the Alabama State College Campus." Have you read that paragraph?

A. Yes, sir. I have.

[fol. 1785] Q. Now, in reading that paragraph—

Mr. Embry: We—

Mr. Whitesell: We have the same agreement about objections, Mr. Embry.

Mr. Embry: Thank you, sir.

By Mr. Calvin Whitesell: (Continuing)

Q. Did it mean any particular person or persons to you?

A. Yes, it did.

Q. Who did it mean?

A. Mr. L. B. Sullivan.

Q. All right, sir. Now, I want to show you this second paragraph here on which this complaint is based. It reads, "Again and again the Southern violators have answered Dr. King's peaceful protests with intimidation and violence. They have bombed his home almost killing his wife and children. They have assaulted his person. They have arrested him seven times—for "speeding," "loitering" and similar "offenses." And now they have charged him with "perjury"—a felony under which they could imprison him for ten years." Did you read that?

A. Yes, I have.

Q. Did that mean any particular person or persons to you?

A. Yes, sir.

Q. Who was that person or persons, sir?

A. Mr. L. B. Sullivan.

Q. I will ask you this. If you believe—not saying that you believe or do not believe—but if you believed the material in those paragraphs in this ad, would that affect your opinion of Mr. L. B. Sullivan?

A. Yes, it would.

Mr. Embry: We have the same understanding as to our objection—

Mr. Whitesell: Yes, sir. The same understanding and same objection.

Lawyer Crawford: The objections are being also noted for the Record that the other defendants have their objections also—

[fol. 1786] Mr. Whitesell: Yes. You have the same objections.

The Witness: Yes, it would.

By Mr. Calvin Whitesell: (Continuing)

Q. In what manner would it affect your opinion?

Mr. Embry: If the Court please, we object to that on the grounds that it is an unauthorized conclusion and also all of our other grounds previously stated.

The Court: All right. Same ruling.

Mr. Embry: We except.

Lawyer Crawford: Exception.

Mr. Whitesell: You may answer.

The Witness: Well, it would affect it to the extent that I don't know whether I would want to be associated with anybody who would be a party to such things that are stated in that ad.

By Mr. Calvin Whitesell: (Continuing)

Q. I will ask you if Mr. L. B. Sullivan has ever worked for the P. C. White Truck Lines?

A. Yes, he has.

Q. If you believed the material stated in this ad, would that affect his re-employment?

Mr. Embry: We object to that question, Your Honor.

The Court: Well, it is part of the Res Gestae and I will give you an exception. Go ahead.

Mr. Embry: We except.

The Witness: Yes, it would.

Mr. Embry: We would like to raise the further objection to this on the grounds that it has not properly been shown that the witness who is on the stand would have anything whatsoever to do with the rehiring of Mr. Sullivan.

Mr. Whitesell: All right. I will ask him about that. Just a minute.

[fol. 1787] By Mr. Calvin Whitesell: (Continuing)

Q. Would you have anything to do with the reemployment of Mr. Sullivan with the P. C. White Truck Lines?

A. Yes, I would.

Q. Would that affect his reemployment with the P. C. White Truck Lines?

A. Yes, it would.

Q. Let me ask you this. Have I or has any member of the firm of Steiner, Crum and Baker, Mr. Nachman, Mr. Steiner or Mr. Baker, ever represented you?

A. No, sir.

Q. Have any one of us ever represented the P. C. White Truck Lines?

A. Not to my knowledge. No, sir.

Q. All right, sir. That's all.

Cross examination.

By Mr. T. Eric Embry:

Q. Mr. White, did someone send this ad to you through the mail?

A. I am not sure if it was sent through the mail or just cut out and left on my desk in the office, sir. I just don't remember. I do remember that it showed up and I saw it.

Q. Is it your recollection that it was some short time after the 29th of March?

A. I just don't remember the date, sir.

Q. You found it on your desk in your office and that was at your place of business?

A. I don't remember exactly where I found it, sir. I just remember somebody showed it to me and it didn't mean much to me at that time but I did read the ad and I have read it several times since then.

Q. You say you didn't pay any particular attention to it at the time?

A. I paid some attention to it. Yes, sir.

Q. You said that you thought the ad meant Commissioner Sullivan. What statement contained in the ad that you read called to your mind or indicated to you that the statements

[fol. 1788] contained and the material contained in that ad referred to or meant Commissioner Sullivan?

A. Well, it says that "Truckloads of police armed with shotguns and tear-gas ringed the Alabama State College Campus." Naturally, Mr. Sullivan is the head of the Police Department here.

Q. When you read that statement, did you think that Mr. Sullivan was a member of the Police Department or had participated in what that purported and set out as having happened?

A. Well, I thought of Mr. Sullivan as being the head of the Police Department.

Q. But you didn't think of him as being charged with doing any of these things that is set out in the ad about ringing the campus or having shotguns and tear-gas, did you?

A. Well, I thought of his department being charged with it, yes, sir. He is the head of the Police Department as I understand it.

Q. Well, I say, you thought of the police as having been charged with doing what was set out in the language in that ad, didn't you?

A. Well, I thought of the police and I thought of Mr. Sullivan also as being the head of the Police Department.

Q. You thought well of Mr. Sullivan when he was employed with your firm, did you not?

A. Yes, sir. I did.

Q. And he enjoyed a good reputation not only in the community but with your company and you considered him one of your valuable employees, did you not?

A. Yes, sir.

Q. And you have continued to maintain your acquaintance with him since the time he was with your concern, have you not?

A. Yes, sir.

Q. And you have known that his reputation has remained good, have you not?

A. Yes, sir.

Q. And you still think as much of him now as before this ad was published, do you not?

A. Yes, sir. I do.

[fol. 1789] Q. You didn't believe anything in that ad that you referred to referred to his reputation and—

A. No, sir. I didn't believe that.

Q. You didn't believe that was true, did you?

A. No, sir.

Q. You didn't believe that Commissioner Sullivan ordered any of the police to do anything wrong, did you?

A. No, sir. I didn't.

Q. Or to intimidate anybody?

A. No, sir.

Q. You didn't believe that Commissioner Sullivan had ordered any of the police or anyone else to assault the person of any other person, did you?

A. No, sir. I didn't.

Q. Now, what was his job or classification or in what capacity did he work with your concern?

A. His title was Safety Director and since that wasn't full time work he worked partly in sales.

Q. What in that ad would cause you to not reemploy Mr. Sullivan in the event that he applied for reemployment with your concern?

A. Well, the fact that he allowed the Police Department to do the things that the paper say he did.

Q. Which you didn't believe.

A. No, sir, I didn't.

Q. And you don't now believe.

A. No, sir.

Q. As a matter of fact, if he were to seek reemployment with you, all the facts being equal, you would reemploy him if you had a place for him, wouldn't you?

A. Yes, sir.

Q. Do you know whether or not and I will ask you for this as a conclusion on your part—do you know whether or not his earnings with your concern at the time he was employed with you was greater or less than the compensation he receives as a member of the Board of Commissioners [fol. 1790] of the City of Montgomery?

A. I—

Mr. Nachman: We object to that, Your Honor.

The Court: Yes, I sustain the objection.

By Mr. T. Eric Embry: (Continuing)

Q. Mr. White, then did you first inform either of these attorneys or Mr. Sullivan that you had seen this ad at the time you did see it there when it was left on your desk?

A. I don't remember the date. I talked with Mr. Sullivan about it some time later but I don't remember the date.

Q. Did you talk with him sometime about the time you had seen this or some day recently?

A. I talked to him recently about it also but I talked to him about it a few days after I saw it too.

Q. Was it before this litigation began?

A. Yes, sir.

Q. As I understand it, you did not see this ad as a result of purchasing an issue of The New York Times or as being a subscriber to The New York Times but the ad was left on your desk detached from the paper proper, you might say.

A. I didn't purchase The New York Times. No, sir.

Q. I see. This was not read by you in the newspaper. It was left on your desk as a separate—like it exists there now.

A. Yes, sir, but it was in newspaper form the same as this is in.

Q. Well, I mean it was a single cut-out. It was a single sheet of paper, wasn't it?

A. Yes, sir.

Q. In other words, you didn't have the paper—

A. I didn't have the full paper. No, sir.

Q. You don't know where this came from—

A. I don't recall at the time. No, sir.

Q. You don't know whether The New York Times placed it there or Commissioner Sullivan or who placed it there in your view, do you?

[fol. 1791] A. Well, I am sure that The New York Times nor Mr. Sullivan didn't.

Q. Did not.

A. Yes, sir.

Q. The one you are holding there—is that the copy you had on your desk?

A. No, sir.

Q. Do you know what became of it?
A. No, sir. I don't.
Q. Did you retain it or destroy it or give it to someone else?
A. I really don't know what happened to it, sir.
Q. All right, that's all. Thank you, sir.

Lawyer Gray: No questions.

Re-direct examination.

By Mr. Calvin Whitesell:

Q. Where is your office, sir?
A. Our home office is located in Dothan, Alabama.
Q. Where do you live?
A. I live in Dothan.
Q. Now, I want to ask you again—Mr. Embry brought this up—I want to ask you about affecting his reemployment with the P. C. White Truck Lines. If you had believed what was in that ad, would you have reemployed Mr. Sullivan?
A. No, sir.

Mr. Embry: We object to that, Your Honor. He has testified to that already.
The Court: Yes, it is repetitious.
Mr. Embry: We move to exclude—
The Court: Keeping repetition out of a law suit is like getting the snakes out of Ireland. We need St. Patrick on the Bench. Anything further for this witness?
Mr. Embry: Yes, Your Honor. I have one more question.

Re-cross examination.

By Mr. T. Eric Embry:

[fol. 1792] Q. Mr. White, were you subpoenaed here or were you asked to come up here by Mr. Nachman?
A. I was asked to come.
Q. You were not supoenaed.
A. No, sir.
Q. All right, sir. Thank you.

Mr. Nachman: If the Court please, at this time we would like to offer into evidence the originals of the demand for retraction sent to the four individual defendants by Commissioner Sullivan.

Mr. Embry: Of course, Mr. Nachman, you are not offering that except in regard to the four individual defendants, are you?

Mr. Nachman: Just as to the four individual defendants. That's right.

Lawyer Gray: You are offering those into evidence for the purpose of showing that they were sent but not necessarily showing that they were received. Is that right?

Mr. Nachman: Well, is there any question about whether or not they were received? We have the return receipts too, if there is any question about it. I didn't think from listening to your opening statement that there was any question that a demand for retraction had been sent but if there is we will prove that later.

Lawyer Gray: We have no objection to them if they are properly shown to have been sent—

Mr. Nachman: Well, I am calling on you now to state—there is no point in putting on witnesses at this point if there is no question about it. Is there any question but that these letters were received by these four defendants or addresses? If there is, then we will prove it.

Lawyer Gray: May we have a moment, Your Honor?

The Court: Yes.

(Consultation between counsel.)

Mr. Nachman: The only thing I am asking for—we can take the time of the Court and jury to do it if necessary.

[fol. 1793] The Court: Well, why not go on and do it. It will probably save time in the end.

Mr. Nachman: Well, I thought that there had been no doubt that these had been received but if there is we can go ahead and prove it.

Lawyer Gray: Well, we are willing to stipulate that the defendants received copies of these.

Mr. Nachman: Well, I understand then that there is no question—

Lawyer Crawford: Yes, there is a question as to the date of receipt of the supposed letters of retraction.

Mr. Nachman: Well, without going into the question of the date of receipt, we can stipulate that these four duplicate originals were received by the addressees thereon. Can we stipulate that for the Record?

Lawyer Gray: Yes, we can stipulate that.

Mr. Nachman: All right. With that understanding, we will offer these four letters into evidence to be identified as our next four exhibits.

(Letter from Commissioner L. B. Sullivan, Montgomery, Alabama, dated March 8, 1960 to Ralph D. Abernathy, Montgomery, Alabama, offered and received in evidence and identified as Plaintiff's Exhibit No. 355.)

(Letter from Commissioner L. B. Sullivan, Montgomery, Alabama, dated March 8, 1960, to S. Seay, Montgomery, Alabama, offered and received in evidence and identified as Plaintiff's Exhibit No. 356.)

(Letter from Commissioner L. B. Sullivan, Montgomery, Alabama, dated March 8, 1960, to J. E. Lowery, Mobile, Alabama, offered and received in evidence and identified as Plaintiff's Exhibit No. 357.)

[fol. 1794] (Letter from Commissioner L. B. Sullivan, Montgomery, Alabama, dated March 8, 1960, to Fred L. Shuttlesworth, Birmingham, Alabama, offered and received in evidence and identified as Plaintiff's Exhibit No. 358.)

Mr. Nachman: Now, there is no question about the return receipt to S. S. Seay and we offer this in evidence and I take it that the Times is not interested in this now. We offer into evidence as our next exhibit return receipt from the Post Office Department for J. E. Lowery. We offer into evidence the return receipt for Ralph D. Abernathy as our next exhibit. We offer into evidence the return receipt for Fred L. Shuttlesworth to be marked and identified as our next exhibit.

(Post Office Department return receipt for Ralph D. Abernathy offered and received in evidence and identified as Plaintiff's Exhibit No. 359.)

(Post Office Department Return Receipt for S. S. Seay, offered and received in evidence and identified as Plaintiff's Exhibit No. 360.)

(Post Office Department Return Receipt for J. E. Lowery, offered and received in evidence and identified as Plaintiff's Exhibit No. 361.)

[fol. 1795] (Post Office Department Return Receipt for Fred L. Shuttlesworth, offered and received in evidence and identified as Plaintiff's Exhibit No. 362.)

Mr. Nachman: Am I correct in stating that the Return Receipts which are now in evidence as Plaintiff's Exhibits No. 359, 360, 361, and 362 accompanied the letters for retraction which are now in evidence and identified as Plaintiff's Exhibits 355 through and including Plaintiff's Exhibit 358 and that the signatures on the Return Receipts are the genuine signatures that they purport to be and there is no question about that? Exhibit No. 359 is Seay—no. No. 356 is Seay, 358 is Shuttlesworth, 357 is Lowery's, 356 is Seay and 355 is Abernathy. Am I correct about that?

Lawyer Gray: Yes.

Mr. Nachman: Your answer is yes. Now, Your Honor, we would like to introduce into evidence the original of the reply that The New York Times made to this demand for a retraction in this case.

Mr. Embry: Is this the one that we sent you?

Mr. Nachman: Yes.

Mr. Embry: We have no objection to that, Your Honor.

Lawyer Gray: That is admitted as only against The Times.

Mr. Nachman: We offer this into evidence, if the Court please.

(Letter from Lord, Day and Lord, 25 Broadway, New York 4, New York, dated April 15, 1960, to Commissioner L. B. Sullivan, Montgomery, Alabama, offered and received in evidence and identified as Plaintiff's Exhibit No. 363.)

[fol. 1796] Mr. Embry: Would you read that letter, Mr. Nachman?

Mr. Nachman: All right, sir. I will be glad to read it out loud. Gentlemen of the jury, what I am now going to read to you is identified as Plaintiff's Exhibit No. 363. This is a letter, from Lord, Day and Lord, 25 Broadway, New York 4, and it is dated April 15th, 1960. It is addressed to Commissioner Sullivan, City of Montgomery, Montgomery, Alabama. It reads as follows: "Dear Mr. Commissioner: Your letter of April 8, sent by Registered Mail to The New York Times Company has been referred for attention to us as general counsel. You will appreciate, we feel sure, that the statements to which you object were not made by The New York Times but were contained in an advertisement proffered to the Times by responsible persons. We have been investigating the matter and are somewhat puzzled as to how you think the statements in any way reflect on you. So far, our investigation would seem to indicate that the statements are substantially correct with the sole exception that we find no justification for the statement that the dining hall in the State college was "padlocked in an attempt to starve them into submission." We shall continue to look into the subject matter because our client, The New York Times, is always desirous of correcting any statements which appear in its paper and which turn out to be erroneous. In the meanwhile you might, if you desire, let us know in what respect you claim that the statements in the advertisement reflect on you. Yours very truly, Lord, Day and Lord."

Mr. Embry: Mr. Nachman, could we stipulate that no reply was made by Mr. Sullivan to that letter?

Mr. Nachman: Yes, we may. No reply was made. The law suit was filed. That was the reply. We would like to call Mr. John Matthews, the Clerk of the Circuit Court as our next witness, if the Court please.

The Court: All right. Proceed.

[fol. 1797] JOHN R. MATTHEWS, having been duly sworn, was called as a witness for the Plaintiff and testified as follows:

Direct examination.

By Mr. M. R. Nachman, Jr.:

Q. Mr. Matthews, do you have with you the records of the Circuit Court of this county in connection with the arrest and charges against some thirty odd individuals growing out of disorderly conduct charges in connection with the demonstration on the 8th of March at the Alabama State College?

A. I do.

Q. Will you read off the names of the—

Mr. Embry: Mr. Matthews, don't answer until I get a chance to state my objections. All I want you to do is not to answer until I—

The Witness: No, I won't answer.

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Will you refer to the records you have there with you, sir.

A. Yes, sir.

Q. Now, where is the first entry in your books which indicate a charge in connection with the incident on March 8th?

Mr. Embry: If the Court please, we object to that on the ground that the question calls for evidence that is not relevant and competent and not within the issues of this cause and that the arrest of these people is incompetent, irrelevant and immaterial to the issues embraced in this case.

The Court: What is your theory, Mr. Nachman?

Mr. Nachman: My theory, Your Honor, is this. This ad charges what we consider indefensible police action in connection with the demonstration which the interrogatories—the answers to the interrogatories state took place on March 8th. Now, there were thirty odd individuals who were arrested by the Police Department in connection with that

demonstration. We think it is important for the Court and [fol. 1798] the jury to know that all of the persons who were arrested in connection with that pleaded guilty to the offense with which they were charged.

The Court: Let me see the ad. How does this appear in the ad?

Mr. Beddow: Now, if Your Honor please, if Mr. Nachman is going to testify and make statements that we are objecting to when we feel that the questions call for incompetent, irrelevant and immaterial testimony—

The Court: Well, let me see the ad. If it is legal and competent evidence, I will let it in.

Mr. Nachman: Here is the ad, Your Honor. It is the third column on the left, Your Honor.

The Court: What particular part here?

Mr. Nachman: It has to do with the part about ringing the campus—that portion of that—the answers to the Interrogatories which contained the Sitton memorandum. The Sitton memorandum states that there were arrests and that they were later—

Mr. Embry: Your Honor, can't he just show that to you without making a statement here in front of the jury—

The Court: Yes.

Mr. Nachman: Well, I thought the Court wanted to hear from me orally as well as from you, Eric.

Mr. Embry: Well, you are just trying to argue the case.

Mr. Nachman: No, I'm not. I'm trying to present to the Court our theory of admissibility.

The Court: Well, I think it is material and I will give you an exception to each party and record and everything.

Mr. Embry: You think it is material, Your Honor?

The Court: Admissible, yes.

Mr. Embry: We except, Your Honor.

Lawyer Gray: I take it this is being admitted solely against the Times and not as against the other defendants.

Mr. Nachman: It is being admitted as against everybody.

Lawyer Gray: Well, under a previous ruling of the [fol. 1799] Court—now there is nothing in this ad and there is nothing in the Complaint, as I read this complaint and this ad, which says anything at all about what they are about to go into at this time.

The Court: Well, I will let it in and give you an exception to each question and each part of the record referred to.

Lawyer Gray: All right, Your Honor. We except.

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Mr. Matthews, would you read the names—

Mr. Embry: Your Honor, do we have an agreement about all of our grounds of objection as to its being incompetent, irrelevant and immaterial before this first question is asked and throughout the following series of questions—

The Court: Oh, yes.

Mr. Embry: I might add this, Your Honor, without admitting its relevancy and materiality, we can stipulate that a certain number of people were arrested and whatever happened to them and that they paid fines, if they did so—

The Court: Well, will that save any time?

Mr. Nachman: Well, can we stipulate on the part of counsel that all persons charged in connection with this incident pleaded guilty, and if so, and if we can't—

Lawyer Crawford: I don't believe that stipulation can be made—

The Court: Well, I don't think you can stipulate. You had better go ahead.

Mr. Nachman: All right, Your Honor.

Lawyer Crawford: I don't believe that stipulation can be made. Now, I want to object to the inference that counsel intentionally keeps expressing relevant to the matter of the Plea that was entered in this case. May I discuss this with the Court outside the presence of the jury?

The Court: Well, I will let it in and give you an exception.

[fol. 1800] Lawyer Crawford: May I approach the Bench, Your Honor?

The Court: Yes.

Lawyer Seay: Your Honor, Mr. Nachman keeps talking about the fact that these people pleaded guilty and is attempting to draw some inference from that. Now, it is our contention that no inference can be drawn from that and that that fact should be made clear to this jury. As far as

we are concerned, the Plea that was entered by those students was simply a matter of tactics and was a position that was arrived at by the attorneys in this case and I was one of the attorneys and it is our contention that they should not be allowed to draw inferences from that in the presence of the jury.

The Court: Well, I will let it in and you may argue that point to the jury if you want to. Go ahead.

Lawyer Seay: We except.

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Mr. Matthews, would you read the names of each one of these individuals as they appear on your records and state the disposition of each case as it appears from your records.

A. The first case is the case of the City of Montgomery versus Kenneth McMillan, charged with refusing to obey an officer. Kenneth McMillan was convicted on May 10th, 1960 and fined $100. He appealed his case and was sentenced to hard labor for one hundred days or the fine and four additional days for the Recorder's fee and that was on July 11 and that conviction was set aside and he thereupon pleaded guilty and paid a fine of $1.00. And that was case No. 7968. In case No. 7969, Edward Jefferson, disorderly conduct, was fined $100 which was paid in that. In 7970, Julian E. Relf, disorderly conduct, pleaded guilty and paid $100 fine on July 11th. On July 11th, Eugene McAllister Morgan pleaded guilty and paid $100 fine for refusing to obey an officer. The next one is Walker, refusing to obey an officer and on July 11th, pleaded guilty and was fined $100. On July 11th, Irvin Clarence Williams, refusing to obey an officer, fined $1.00. Pitts Edward Jefferson, second case, he was convicted on May 11th and was fined $100 [fol. 1801] and was sentenced to hard labor for one hundred days for the fine and $4.00 for the Recorder's fee—four days for the Recorder's fee—and that was set aside and on July 11th, 1960, he pleaded guilty and paid $1.00, for refusing to obey an officer. Julian Relf, refusing to obey an officer, pleaded guilty and was fined $1.00. Case No. 7976, another case against McMillan, he was convicted

for disorderly conduct and was fined $100 which was paid. In Case No. 7977, Eugene McAllister Morgan, pleaded guilty and was fined $100. On July 11th again Carrol Ray Walters pleaded guilty and paid $100 fine for disorderly conduct. On July 11th Irvin Clarence Williams pleaded guilty to disorderly conduct and was fined $100. Raymond Reynolds, charged with refusing to obey an officer, pleaded guilty and was fined $1.00. Raymond Reynolds, another case, disorderly conduct, pleaded guilty on July 11th and was fined $100. Willard Edward Waters, refusing to obey an officer, pleaded guilty on July 11th and was fined $1.00. Another case against Willard Edward Waters for disorderly conduct and on July 11th he pleaded guilty and was fined $100. On July 11th, Marion J. Whitehurst pleaded guilty to refusing to obey an officer and was fined $1.00. On the same date, the same defendant pleaded guilty to disorderly conduct and was fined $100. On the same date, July 11th, Frank Edsal Hawkins pleaded guilty to refusing to obey an officer and was fined $1.00 and on the same date, the same man, for disorderly conduct, paid $100. Milton R. Ivery, for refusing to obey an officer, July 11th, pleaded guilty and paid $1.00 and on the same day the same man pleaded guilty to disorderly conduct and was fined $100. On July 11th, James Rickerson, Jr., pleaded guilty to refusing to obey an officer and was fined $1.00 and on the same date the same man pleaded guilty to disorderly conduct and paid a hundred dollar fine. Elbert L. Dennis, for refusing to obey an officer, paid a $1.00 fine July 11th. The same date the same man paid a $100 fine for disorderly conduct. Carl A. Moore, July 11th, $1.00 fine for refusing to obey an officer and the same defendant paid a fine for disorderly conduct of $100. That was on the same date. Richard Sanders, Jr. pleaded guilty and was fined $1.00 which was paid on July 11th and on the same date he pleaded guilty to disorderly conduct and paid a one [fol. 1602] hundred dollar fine. Arrington pleaded guilty for refusing to obey an officer and paid a fine of $1.00 and on the same date he pleaded guilty to disorderly conduct and was fined $100. Rebecca Dixon, refusing to obey an officer, July 11th, pleaded guilty and paid a fine of $1.00.

The same date on another charge of disorderly conduct was fined $100 which was paid.

Q. A plea of guilty?

A. Yes, pleaded guilty. Next is Augusta Edward Grace pleaded guilty for refusing to obey an officer and was fined $100 and on the same date pleaded guilty again to disorderly conduct and was fined $100 which was paid. James Stanley Haskins, refusing to obey an officer, July 11th, pleaded guilty and was fined $100 which was paid. The same man on the same date was fined $100 for disorderly conduct which was paid. Emmet M. Harne, refusing to obey an officer, pleaded guilty and was fined $1.00. On the same date for disorderly conduct he pleaded guilty again and paid a $100 fine. Barley, refusing to obey an officer, paid a $1.00 fine and on the same date for disorderly conduct pleaded guilty and paid a $100 fine. Thomas Lee Calhoun, refusing to obey an officer, paid a $1.00 fine on July 11th and on the same date pleaded guilty to disorderly conduct and was fined $100. Duslin C. Hayes, refusing to obey an officer pleaded guilty and paid a $1.00 fine and on the same date pleaded guilty to disorderly conduct and paid a $100 fine. Franklin Delano Riley, refusing to obey an officer, pleaded guilty and paid a $1.00 fine and on the same date he pleaded guilty again and paid a $100 fine. Paul Joseph Adams, refusing to obey an officer, pleaded guilty and paid a $1.00 fine and on the same date pleaded guilty again and paid a $100 fine for disorderly conduct. Samuel Floyd, refusing to obey an officer, $1.00 fine and on the same date pleaded guilty to disorderly conduct and paid a $100 fine. Dolphus Hendrix, refusing to obey an officer, $1.00 fine and on the same date pleaded guilty and paid a $100 fine for disorderly conduct. Sylvester Walters pleaded guilty to refusing to obey an officer and paid $1.00 fine and on the same date, disorderly conduct, pleaded guilty and paid a $100 fine. Joanna E. Davidson, refusing to obey an officer, pleaded guilty and paid a $1.00 fine and on the same date [fol. 1803] pleaded guilty to disorderly conduct and paid a $100 fine. Dorothy Henderson, refusing to obey an officer, $1.00 fine and on the same date pleaded guilty to disorderly conduct and paid a $100 fine. Theresa Maddox, refusing to obey an officer, pleaded guilty and was fined

$1.00 and then pleaded guilty to disorderly conduct and was fined $100. Rosetta White, refusing to obey an officer, paid a $1.00 fine on a plea of guilty and Rosetta White again, disorderly conduct, pleaded guilty and paid a $100 fine. I think that's all of them.

Q. Mr. Matthews, do you know of your own knowledge whether there were any other cases in this Court and by this Court I mean the Circuit Court of Montgomery County, Alabama, involving charges arising out of that demonstration on March 8th?

Mr. Embry: If the Court please, we object to that on the grounds that it is incompetent, irrelevant and immaterial and doesn't tend to shed any light on the issues embraced in this case.

The Court: Well, he might answer that he doesn't know. Let's see what he says. Let us see whether he knows or whether he doesn't.

Mr. Embry: We except.

The Witness: You mean from the demonstrations at the colored school out there?

Mr. Nachman: Yes, sir.

The Witness: I don't know of any other charges. I don't believe there were any more. Now, there might have been.

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Your records show that there were no more.

A. No. I don't think there was any more. I think that's all.

Q. Mr. Matthews, do you know of your own knowledge whether Martin Luther King, Jr., was acquitted by a jury in this county on a charge of falsifying his income tax returns?

A. Yes, he was.

Mr. Embry: Your Honor, that is incompetent, irrelevant and immaterial.

[fol. 1804] The Court: I will let it in but the Court takes judicial notice of its own record.

Mr. Nachman: No further questions.

Mr. Embry: John, I want to congratulate you.

The Witness: No questions?

Mr. Embry: You are the only witness who has recited facts and who hasn't drawn on his imagination.

The Witness: Thank you, so much—

The Court: Go ahead, gentlemen.

Lawyer Gray: I have a question, Your Honor.

The Court: Go ahead.

Cross examination.

By Lawyer Gray:

Q. Mr. Matthews, in the student cases that were tried, who served as Judge in those cases?

A. What cases were they now?

Q. The cases you just referred to. Who served as Judge in those cases?

A. Well, Judge Carter entered these pleas.

Q. What about the original case that was tried?

A. Well, now, wait a minute. Well, Mr. Baker acted as Judge.

Q. Is that the same Mr. Baker who is one of counsel for the plaintiff?

A. There he sits right over there across from the Bench.

Q. Now, one other thing, Mr. Matthews—

Mr. Baker: Now, Your Honor, I don't want to object to this—

Lawyer Gray: Your Honor—

The Court: Let's see what his objection is.

Mr. Baker: It puts me in the position of either having to call counsel to the Stand or else take the witness stand myself and testify that my connection with this case was made well known to counsel and was waived.

The Court: All right. Any more questions?

Lawyer Gray: Yes, sir.

[fol. 1805] The Court: Go ahead.

By Lawyer Gray: (Continuing)

Q. These were appeals from the City Court. Is that correct?

A. That's right.

Q. Do you recall after the original case was tried before Mr. Baker and after we had filed an appeal that I had a discussion with you about the possibility of appealing all of these cases?

A. I think you did.

Q. Do you remember giving me an estimate of the cost of preparing the transcript if we had appealed those cases?

A. Well, I couldn't have given you an estimate on the transcript because I did not know what the Court Reporter's fee would be in those cases and that would be the major part of the transcript.

Q. Well, we did discuss that generally, did we not?

A. Yes. I think we did, yes.

Q. Will you tell the Court whether or not in your opinion that if all of those cases had been appealed that the Court costs of the Record would have been over ten thousand dollars?

A. Well, I wouldn't want to say that. I don't know that it would run to ten thousand dollars. No. I wouldn't think that it would run to that much.

Q. But it was—

A. It would have been a sizeable amount.

Q. And it would have been preparing separate transcripts for each offense.

A. That's right.

Q. And there were thirty-two defendants approximately.

A. That's right.

Q. Which would have meant some sixty-four separate transcripts.

A. That's right.

Q. And wasn't it after that matter had been discussed that these persons entered pleas of guilty?

A. Yes, they entered pleas of guilty after there was some [fol. 1806] discussion about the cost of preparing the transcripts.

Q. All right. That's all.

Redirect examination.

By Mr. M. R. Nachman, Jr.:

Q. Mr. Matthews, Fred Gray was the attorney for all of these people who pleaded guilty, was he not?
A. He was.
Q. It was done in open Court before Judge Carter?
A. Oh, yes.
Q. Was Solomon Seay also in the case?
A. Yes, he was there.
Q. Were they present when their clients pleaded guilty?
A. Yes.

Lawyer Gray: We pleaded them guilty, Mr. Nachman.

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. They didn't do it without advice of counsel, did they?
A. No.

Lawyer Gray: Because of the cost involved.
Mr. Nachman: That's all.
The Court: Any more questions?
Lawyer Gray: That's all, Your Honor.

E. Y. Lacy, having been duly sworn, was called as a witness for the Plaintiff and testified as follows:

Direct examination.

By Mr. M. R. Nachman, Jr.:

Q. Will you state your name to the Court and jury, please?
A. E. Y. Lacy.
Q. What is your present occupation, Mr. Lacy?
A. Lieutenant of Detectives of the Montgomery Police Department.
[fol. 1807] Q. Were you employed by the Montgomery Police Department—how long have you been employed by the Montgomery Police Department, Mr. Lacy?

A. For thirty-two years.

Q. Since 1955 or early 1956 in what capacity have you worked there with the Police Department? What was your job down there?

A. Lieutenant of Detectives, sir.

Q. What are the general scope of those duties?

A. Supervision.

Q. In the course of your duties, Lt. Lacy, did you have occasion to investigate a bombing which took place in the home of Martin Luther King, Jr., in Montgomery, Alabama?

Mr. Embry: We object to that, Your Honor. There is no issue in this case claimed about the occurrence or not of any events—

The Court: I believe the ad mentioned something about a bombing, didn't it?

Mr. Embry: Well, the ad mentions that, yes, but—

Mr. Baker: Let's have a stipulation in Open Court if there is any controversy about it—

The Court: Let me see the Complaint.

Mr. Embry: Your Honor, may I get my grounds of objection in?

The Court: Yes. Go ahead.

Mr. Embry: It is incompetent, irrelevant and immaterial and not relevant to any of the issues embraced in this case and is not relevant to any of the issues in this case by the pleading as framed by the Complaint or the Plea of defendant, The New York Times. It doesn't shed any light on issues and doesn't have any probative value.

Lawyer Gray: The other defendants wish to join in the objection on the same grounds, if the Court please.

The Court: Overruled.

Mr. Embry: We except.

Lawyer Crawford: We except.

[fol. 1808] By Mr. M. B. Nachman, Jr.: (Continuing)

Q. You may answer the question. Did you have anything to do with the investigation of that bombing in the course of your official duties with the Montgomery Police Department?

A. Well, which bombing? There was more than one.

Q. Well, as many as occurred in relation to Martin Luther King's house.

A. On two occasions, I did.

Q. Were there any other occasions where any bombs were used at his home?

A. I don't remember how many. If there were any other, I don't remember.

Q. The two occasions you have mentioned were the only ones you remember. Is that correct, sir?

A. Yes, sir.

Q. In the course of your duties you were in on the investigation of those two bombings. Is that correct?

A. Yes, sir.

Q. Did the bombs go off on both occasions?

A. No, sir.

Q. On how many occasions?

A. One.

Q. What happened on the second occasion?

A. It failed to go off. It was thrown on the front porch. There was one fuse—there were nine sticks of dynamite wrapped around a pipe with adhesive tape and in lighting the fuse, one of them lit and one didn't, and the one fuse that did light burnt into the sticks of dynamite but did not go into the cap and the cap did not go off.

Q. Did you or anyone else in your detail, so to speak, have anything whatsoever to do with dismantling that bomb?

A. Yes, sir.

Q. You did?

A. Yes.

Q. You and who else?

A. Dr. Pruitt, Bill Lyerly and myself.

Q. At that time, what was Mr. Lyerly's job?

[fol. 1809] A. He was the Director of Public Safety for the State of Alabama.

Q. What was Dr. Pruitt's job?

A. He was with the State Toxicology Department.

Mr. Embry: May I inquire if we have the same understanding that we have our objections to this entire series of questions with a Motion to Exclude and an exception.

Mr. Nachman: Yes, that's—
The Court: Yes. Go ahead.

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Lieutenant, did the Police Department actively engage in an investigation to determine who were the persons responsible for this bombing?
A. Yes, sir.

Lawyer Gray: We have the same objection and exception.

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Did the Police Department have anything to do with the actual bombing? Did the Police Department arrange for the bombing or have anything to do with the bombings?
A. You mean of throwing the bomb?
Q. Yes, sir.
A. No, sir.
Q. Did the Police Department do everything they could to apprehend the persons who might be responsible for the bombings?
A. Yes, sir.

Mr. Embry: If the Court please, we object to that. It is not relevant—
The Court: I think it is relevant under the Pleadings here. Overruled.
Mr. Embry: We except.

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Did the Police Department condone or approve of the bombings in any way?
[fol. 1810] A. No, sir.
Q. Was the investigation undertaken by the Police Department an ordinary routine investigation or was it an extraordinary investigation in terms of personnel and time and expense?

Mr. Embry: We object to that, Your Honor, as to whether it was an extraordinary effort or little effort or—

The Court: I will let it in and give you an exception.
Mr. Embry: We except.
Lawyer Crawford: Your Honor, we would like to interpose an objection at this point on the ground that this is highly prejudicial. Mr. Nachman is trying to turn the clock back to 1955 when all this turmoil was going on here in Montgomery—
The Court: Overruled and you have an exception.

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. You may answer the question, Lieutenant.
A. The Police Department did extensive research work with overtime and extra personnel and we did everything that we knew including inviting and working with other departments throughout the country.
Q. All right. That's all.

Cross examination.

By Mr. T. Eric Embry:

Q. Lieutenant, the police aren't in the habit of going around and throwing bombs, are they?
A. No, sir.
Q. And nobody around here ever believed that they did, did they?
A. Well, we were told we were.
Q. Your job was to investigate in an attempt to determine to find out who had done that, wasn't it?
A. That is correct.
Q. And your job, Lieutenant, was to apprehend them and prosecute them for that, wasn't it?
[fol. 1811] A. Right.
Q. All right. That's all.

The Court: The Police Department doesn't throw bombs, do they?
The Witness: Never heard of it.
Mr. Embry: That's all.

Cross examination.

By Lawyer Crawford:

Q. Mr. Lacy, was Mr. Sullivan in office at that time? Was he in office at the time you just spoke of? At the time of the bombings?

A. I don't believe so.

Q. When did he take office?

A. I couldn't say.

Q. Then, obviously, this article or the matter that you just talked about didn't apply to him, did it?

Mr. Nachman: If the Court please, we object to the form of that question. He is asking this witness to draw a conclusion—

The Court: Yes.

Lawyer Crawford: This is Cross Examination, Your Honor, and it certainly was brought out—

The Court: Well, he can't draw any conclusion. That's for the jury from the evidence—

Lawyer Crawford: It appears, Your Honor, that the other witnesses have been giving their conclusions and opinions and you allowed us to have an objection and an automatic exception to it and that's all we are asking is the same as the others—

The Court: I sustain the objection.

Lawyer Crawford: Sir?

The Court: I sustain the objection to the form of the question.

Lawyer Crawford: I am sorry. I didn't understand you, Your Honor.

The Court: I sustain the objection to the form of the question and the question itself.

[fol. 1812] Lawyer Crawford: We except, Your Honor.

By Lawyer Crawford: (Continuing)

Q. Mr. Lacy, did you read the ad?

A. Which ad?

Q. The ad you were talking about. Weren't you talking about an ad?

A. I haven't talked about one yet.

Q. You weren't talking about anything then, were you?
A. I was talking about the bombings.
Q. That's all.

Mr. Nachman: No further questions.

O. M. Strickland, having been duly sworn, was called as a witness for the Plaintiff and testified as follows:

Direct examination.

By Mr. M. B. Nachman, Jr.:

Q. Will you state your name to the Court and jury, please?
A. O. M. Strickland.
Q. What is your present employment, Mr. Strickland?
A. The Police Department of the City of Montgomery.
Q. Do you live in the City of Montgomery?
A. No, sir, I don't.
Q. Where do you live, sir?
A. At Route 1, Ramer.
Q. How long have you been employed by the Police Department of the City of Montgomery, sir?
A. For a little over seven years.
Q. Mr. Strickland, I will ask you to go back in your memory to a time when a man named Edward Davis was being charged with assault with intent to murder by Rev. Abernathy. Am I correct in stating that that was early in 1958?

Mr. Embry: If the Court please, we are going to have to [fol. 1813] object to that as being incompetent, irrelevant and immaterial.

The Court: How would that connect up with this ad here, Mr. Nachman?

Mr. Nachman: In the ad it says that Martin Luther King, Your Honor, was arrested for "Speeding," "loitering" and similar "offenses." The answers to the interrogatories say that King's statement to Sitton—that the only time he was assaulted was when he was arrested and that is a circumstance that we now propose to go into by this witness.

Mr. Embry: Now, Your Honor, I want to make this clear. I want to remind the Court that he introduced these answers to the interrogatories and now he is trying to contradict his own evidence. First of all—

Mr. Nachman: If the Court please—

Mr. Embry: Just a minute, please, Mr. Nachman. Let me finish.

Mr. Nachman: Go ahead, sir.

Mr. Embry: It is the undisputed evidence that these events he is now attempting to bring before us occurred before Mr. Sullivan took office and they occurred before the publication of this advertisement and before this plaintiff could have complained about it—

Mr. Nachman: The law is entirely clear, Your Honor, that when we introduced the Interrogatories in evidence that that does not deprive us of the opportunity of contradicting if we so desire—

The Court: Well, on the question of materiality—that's what you need—

Mr. Nachman: On the question of materiality, Your Honor, they used the words, "They have assaulted his person." They said, "They have arrested him seven times—for "speeding," "loitering" and similar "offenses."

The Court: Well, you are not asking him about Rev. King.

Mr. Nachman: Well, Your Honor, the explanation which they gave in the answers to the interrogatories—

[fol. 1814] Lawyer Crawford: Your Honor, we would like to interpose an objection here. While Mr. Nachman is waiting for your ruling he is bringing before this jury the things he intends to prove and thereby putting it before the jury in the event you sustain the objection.

The Court: Well, let me try to save a little time here. I don't believe this evidence is admissible.

Mr. Nachman: Your Honor, may I call your attention to this?

Mr. Steiner: Will you look at this ad, Your Honor?

(Off the Record discussion between Court and counsel.)

Mr. Nachman: I will re-phrase my question, Your Honor, and perhaps that will eliminate some of the objections.

The Court: All right. Go ahead.

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Officer, did you have occasion at any time to arrest Martin Luther King, Jr.?

A. Yes, sir. I did.

Q. Will you state to the Court and the jury what the circumstances were on that occasion as fully as—

The Court: Connect it with King.

Mr. Nachman: As connected with the arrest of Martin Luther King, Jr. and state what the circumstances were and what happened on that occasion in your own words.

Mr. Embry: We object to that, if the Court please, on the grounds that it is incompetent, irrelevent and immaterial and not evidence pertinent to the issues framed within this case and doesn't shed any light on those issues and doesn't tend to prove or disprove any of the allegations of the Complaint or defensive pleas of the defendant in this case, Your Honor.

The Court: I will let it in and give you an exception.

Mr. Embry: We except, Your Honor.

Lawyer Gray: We interpose a similar objection, if the Court please.

[fol. 1815] The Court: Same ruling.

Lawyer Gray: We except, Your Honor.

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. You may answer, sir.

A. I was one of the officers that assisted in the arrest and it was made outside of the Court Room at the City Hall. On this particular morning the sidewalk had been blocked with a lot of people and we were stationed on the steps at the Court Room door. Now, we were told that we were to admit no one since the aisles were already full in the Court Room unless that they had a subpoena. Rev. King approached the steps and tried to gain admittance to the Court Room and we refused to let him in.

He insisted that he had a right to go in and we asked him if he had a subpoena. He didn't produce one. I couldn't say that he didn't have one but if he did have one, he didn't produce it. We arrested him at that time for loitering and he was carried up to the front door and carried back to a detention cell at headquarters.

Q. How long did he stay there, sir?

A. Well, really, the door wasn't hardly locked on him because he was allowed to make his own bond and that bond was carried back there by the Sergeant and he signed it right there at the detention room and he was released.

Mr. Embry: If the Court please, we object to going into some transactions between third persons—

The Court: Your objection was sort of ex post facto and a little late. I will let it in and give you an exception.

Mr. Embry: We except. We move that these answers be stricken, if the Court please.

The Court: Overruled and you may have an exception.

Mr. Embry: We except, Your Honor.

Mr. Beddow: What is this witness' name? You never have identified him—

Mr. Nachman: He stated his name for the Record when he began to testify, Mr. Beddow. His name is O. M. Strickland.

[fol. 1816] The Court: Go ahead, gentlemen.

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Officer, did you or anyone in your presence on this occasion assault the person of Martin Luther King, Jr.?

Mr. Embry: Just a minute! Don't answer that, please, sir! That calls for a conclusion of law, if the Court please.

The Court: Well, assault is a shorthand rendition of fact, isn't it?

Mr. Embry: Ordinarily it would be but if he was reciting what happened—

The Court: Well, I think the Court knows what assault and battery is. Let me sweetly disagree with you and give you an exception.

Mr. Embry: His testimony is incompetent, irrelevant and immaterial in that regard and we except, Your Honor.

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. You may answer the question.
A. No, sir. He was not.
Q. What is your height? How tall are you?
A. Six foot, sir.
Q. You are six feet tall?
A. Yes, sir.
Q. How much do you weigh?
A. I have weighed from 129 to 134 pounds. That's tops.
Q. How much did you weigh on the occasion you have just described?
A. That would be about as close as I could get it. About 129 to 134, sir.

The Court: Did you say you were six feet four?
The Witness: No, sir. Six, Your Honor. Six feet.

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. From your observation of Martin Luther King, Jr. [fol. 1817] on this occasion that you just described, would you say that he was lighter than you were or heavier than you were?

Mr. Embry: Your Honor, we object to this. Is it understood that we have an objection and exception to all this line—

The Court: Yes. I believe I have let you go far enough on that—

Mr. Nachman: All right, Your Honor. I withdraw the question. No further questions.

Cross examination.

By Mr. T. Eric Embry:

Q. Are you in good health, Officer?
A. Yes, sir.
Q. Are you feeling good today?
A. Yes, sir. I think so.
Q. When did all this happen?
A. Now, I couldn't say because I didn't take any notes.

I would say along about September in 1958 or something like that, and that's purely from memory because I have no notes whatsoever.

Q. Well, I am not trying to be that accurate but I want to establish if I can if it's true. Did all of this occur before Commissioner Sullivan became the Commissioner of Public Affairs of the City of Montgomery?

A. Yes, it did.

Q. And someone else at that time was holding the office that he now holds.

A. Yes, sir. That's correct.

The Court: I think Mr. Clyde Sellers was the Commissioner then.

The Witness: That's right, Your Honor.

The Court: Mr. Sullivan succeeded him. Couldn't we have a stipulation here about what date Mr. Sullivan went into office? I think it is a matter of public record, isn't it? What date was it, Mr. Cates?

[fol. 1818] A Voice: October 5th, 1959, Your Honor.

Mr. Nachman: Let the Record show that we stipulate that that was the date that Commissioner Sullivan took office.

Mr. Embry: We have no further questions for this witness, Your Honor.

The Court: Any other questions?

Lawyer Gray: No questions.

Frank R. Stewart, having been duly sworn, was called as a witness for the Plaintiff and testified as follows:

Direct examination.

By Mr. Robert Steiner:

Q. Please state your name, sir.

A. My name is Frank R. Stewart.

Q. What position do you hold, Doctor?

A. I am the State Superintendent of Education.

Q. How long have you been State Superintendent of Education?

A. It will be two years this January.

Q. In February and March of 1960, did the State Superintendent of Education, or did you as the State Superintendent of Education, sit as a member of the Alabama State Board of Education?

A. Oh, yes. I am a member of the State Board of Education as well as State Superintendent of Education.

Q. Are you also Secretary of that Board, sir?

A. I am an Executive Officer, yes.

Q. Over what schools of higher education does that Board have jurisdiction?

A. We have six institutions of higher learning in Alabama. There is one located at Jacksonville, the Jacksonville State College; one is located at Florence, the Florence State College; the Troy State College; Livingston State College; the Alabama A & M located at Huntsville and the Alabama State College located in Montgomery.

[fol. 1819] Q. Would you state the circumstances of the expulsion of nine students from Alabama State College by the State Board of Education?

Mr. Embry: Now, Your Honor, we want to object to this question and I assume that there will be a line of questions along this line and we wish our objections to apply then to them all. It is incompetent, irrelevant and immaterial and not within the issues framed in this case. This has not been made an issue in the case and is outside of the pleadings—

The Court: I believe it comes within the pleadings and I will give you an exception to this line of questioning.

Mr. Embry: Do we have an understanding, Your Honor, with plaintiff's counsel that we get the same objections or any additional grounds that we will think of at a later time—

The Court: Oh, yes.

Mr. Embry: With the same ruling and exception—

The Court: Yes.

Mr. Embry: Let the Record show that is stipulated then—

Lawyer Gray: We have the same objection and exception on the part of the other defendants.

Mr. Steiner: The plaintiff so stipulates.

The Witness: Do you want me to answer now?

By Mr. Robert Steiner: (Continuing)

Q. Do you remember the question?

A. I think I do. The action of the State Board of Education took place on March 2nd—

The Court: That would be in 1960 or when?

The Witness: This past March 2nd, Your Honor. March of 1960, when the nine students were expelled from Alabama State College by the State Board of Education and thirty-one students, I believe, I am not positive but I believe the Minutes will show that thirty-one students were put on probation at that time.

By Mr. Robert Steiner: (Continuing)

Q. The Board itself expelled those students?

[fol. 1820] A. The State Board of Education consisting of nine members, one from each Congressional District, the Governor and myself, making a total of eleven, everyone having a vote on the Board and the vote was unanimous to expel the nine students.

Q. Do you have the Minutes of that Board meeting with you?

A. I have a certified copy of the Board meeting of March 2nd dealing with the expulsion of the students.

Mr. Embry: Your Honor, we would like to have an additional objection and exception on account of the documentary evidence and we assign the same grounds and any additional grounds—

The Court: Is that one of the public records that you are required to keep by State law?

The Witness: Yes, Your Honor.

The Court: Those are official records of your office.

The Witness: Yes, they are open to the public, Judge.

Mr. Steiner: Mr. Embry, the Minutes are about this thick and we are only bringing in this one.

Lawyer Gray: May I see it for a minute?

Mr. Steiner: Yes. Here it is.

Mr. Beddow: Wait a minute. I want to look at it too.

The Witness: That is a certified copy.

Mr. Beddow: Well, I want to see it.

Mr. Steiner: Well, I offered it to your partner and he refused to look at it. Here it is.

By Mr. Robert Steiner: (Continuing)

Q. I believe you have already testified that you were the Secretary of the State Board of Education.

A. Yes, sir. That's right.

Mr. Embry: Your Honor, do we have the same understanding about any documents also and do we have the same objection and the same ruling and exception?

The Court: Yes.

Mr. Embry: We assign the same grounds and any—

[fol. 1821] Mr. Steiner: Are you making any point because this is a certified copy?

The Court: I understand you have no objection to the fact that it is a certified copy and not the original.

Mr. Embry: Oh, no, sir. That's right. We have no objection on that point.

By Mr. Robert Steiner: (Continuing)

Q. Doctor, would you read to the jury the document which you have certified as being a copy of the Minutes of the State Board of Education.

A. This entire thing?

Q. Yes, sir.

Mr. Embry: Is it identified by number as yet? Do you have an Exhibit No. on it?

Mr. Steiner: We will have it marked as an exhibit for identification now. It is marked and identified as Plaintiff's Exhibit No. 364. Will you read that, doctor?

The Witness: As you understand now, this deals only with the expulsion of the students.

Mr. Steiner: Yes, go ahead.

The Witness: "Dr. H. Council Trenholm, President, Alabama State College, complying with the former request of Governor Patterson, appeared before the Board and gave his report on the investigation relating to the downtown demonstration of certain students from the college in the matter of appearing at the Court House restaurant and

demanding service. It was determined by his investigations and that of Mr. Floyd Mann, Director of the State Department of Public Safety, that there were nine students who led the demonstration. Dr. Trenholm agreed that the students should be punished and that their action might have been influenced by a student or students out of the State. He earnestly requested that the students be allowed to take the final quarter examinations. The Board agreed that they be permitted to do so, but that the order of expulsion for the [fol. 1822] nine leaders of the demonstration be made effective Friday, March 4th, and that the pupil record show such action, also that probation of other students taking part in the demonstration be made effective the same date. Dr. Trenholm stated that the participating students were obsessed with obligation and conviction and felt that they had done no wrong. He expressed the feeling that he could control future behavior on the campus and that the students should be reprimanded and put on probation from now on. The Governor felt that the situation was much too tense and the danger of life and bloodshed too perilous to pass up lightly the matter of punishment of the participants. He then offered the following recommendations and moved its approval: After a full investigation of the demonstrations carried on by the students of the Alabama State College for Negroes and after careful consideration of the evidence obtained as a result of the investigation, I recommend that the following action be taken: One. That the following students be expelled: Bernard Lee, Norfolk, Virginia. St. John Dixon, National City, California. Edward E. Jones, Pittsburgh, Pennsylvania. Leon Rice, Chicago, Illinois. Howard Shipman, New York, New York. Elroy Emory, Ragland, Alabama. James McFadden, Prichard, Alabama. Joseph Peterson, New Castile, Alabama. Marzette Watt, Montgomery, Alabama. Two. That the following students be placed on probation and allowed to remain in school pending good behavior: Henry Allen, Seale, Alabama; Richard Ball, Fairfield, Alabama. Willis C. Battle, Phenix City, Alabama. Cornelius Benson, Birmingham, Alabama, Samuel Bouie, Anniston, Alabama. Floyd Coleman, Sawyerville, Alabama. Henry Crawford, Montgomery, Alabama. James Earl Davis, Prichard, Ala-

bama. Thomas C. Ervin, Heflin, Alabama. Arthur Lee Foster, Montgomery, Alabama. Isham Harris, Troy, Alabama. Jonathan Hicks, Chatom, Alabama. Trenholm Hope, Selma, Alabama, Jerry Leon Johnson, Collinsville, Alabama. Andrew William Jones, Birmingham, Alabama. Eddie Lee McSwain, Eufaula, Alabama. Theophilius Moody, Camden, Alabama. Joe Louis Reed, Evergreen, Alabama. William Renfroe, Roba, Alabama. Robert Lee Woods, Heiberger, Alabama. Three. That all other members of the student body be advised that they will be expected to behave themselves and obey the law and that any [fol. 1823] future conduct on their part which is in violation of the law or calculated to incite riots and disorders will result in their immediate dismissal from the school. Mr. Word moved the approval of the recommendation; his motion carried by all members voting aye." I have certified here that this is a true and correct copy of an excerpt from the Minutes of the Alabama State Board of Education meeting at 2:00 P. M. Wednesday, March 2nd, 1960, at Montgomery, Alabama.

Mr. Steiner: If the Court please, we offer this in evidence.

(Certified copy of excerpt of Minutes of the Alabama State Board of Education meeting of Wednesday, March 2nd, 1960, at Montgomery, Alabama, offered and received in evidence and identified as Plaintiff's Exhibit No. 364.)

By Mr. Robert Steiner: (Continuing)

Q. Doctor, did Mr. Whitesell, Mr. Nachman, Mr. Baker or do I represent you personally or the State Board of Education in any manner?

Mr. Embry: Your Honor, we object to that.

The Court: Well, I will let it in and give you an exception.

Mr. Embry: We can stipulate that if that's a fact.

By Mr. Robert Steiner: (Continuing)

Q. You have, of course, talked both to Mr. Nachman and to me.

A. Yes. That's the only two. I haven't talked to anyone else about the case at all.

Q. Now, doctor, I want to read one sentence to you and ask you whether it is true. "In Montgomery, Alabama, after students sang, 'My Country, 'Tis of Thee' on the State Capitol steps, their leaders were expelled from school."

Mr. Embry: Don't answer yet, please, sir. We object to [fol. 1824] that on the grounds that it invades the province of the jury and it calls for the witness' conclusion as to a fact and is not a recitation of what happened—

The Court: I will let it in and give you an exception.

Mr. Embry: We assign all of our other grounds previously assigned, Your Honor.

The Court: Yes.

Lawyer Gray: We have the same exception.

By Mr. Robert Steiner: (Continuing)

Q. You may answer.

A. That never was discussed when the students were expelled and it was never even mentioned at the State Board meeting when the students were—no. It was never mentioned. That wasn't even discussed at any of the Board meetings we had.

Q. All right, sir. That's all.

Cross examination.

By Mr. T. Eric Embry:

Q. I assume that the Minutes there—you are familiar with them, are you not?

A. Well, I hope so, sir.

Q. The Minutes set out the entire facts about the occasion when they were expelled, do they not, doctor?

A. Oh, yes.

Q. Are those the complete Minutes?

A. That's right as far as I know.

Q. Those are the complete Minutes with respect to those affairs of the expulsion of the students.

A. Yes. I would say this, Mr. Embry, that every word

that was said at the Board is not incorporated in the Minutes. You understand that, of course. We discussed at the Board meeting not only—I remember this very distinctly—the discussion of the cafeteria incident and some of the other incidents that were taking place but the ques-
[fol. 1825] tion that I was asked a few minutes ago about the singing—that was never even discussed or at least I never heard it.

Q. Well, in other words—what is this?

A. This is a board meeting later on.

Q. Well, what I meant really to ask you, I suppose, was this. This is the formal action of the Board in that regard, is it not?

A. The formal action of the Board when they were expelled. Yes, sir.

Q. Governor Patterson, I believe, is the ex officio Chairman of the Board, is he not?

A. Yes. He is the Chairman.

Q. And he was when this occurred and as the Minutes reflect, he offered the resolution as reflected by the Minutes there.

A. That's right.

Q. That was the only action taken with regards to the expulsion of the students. The only action taken was taken by the State Board of Education.

A. Yes, sir. The State Colleges come under the supervision of the State Board of Education.

Q. The City of Montgomery hasn't expelled any students or the City Government hasn't expelled any students at Alabama State College, have they?

A. Well, the City Government hasn't got anything to do with it, Mr. Embry. As far as the expulsion of the students, of course, we depend upon the City of Montgomery for law and order like we do for our public schools in the State but not to expel students because it is set forth in the Constitution of this State that those colleges would come under the supervision and direction of the State Board of Education.

Q. That's what I wanted to know. Thank you, sir. That's all.

Lawyer Gray: No questions.

Mr. Nachman: If the Court please, we would like to have the Court Reporter mark this two-page exhibit as our next exhibit No. 365. It consists of two pages.

Mr. Embry: May we have the same objection about this in that we have the same grounds of objection to this as to [fol. 1826] the testimony and the documents that were presented by Mr. John Matthews' testimony and we assign the same grounds and have the same ruling and let the Record reflect that?

The Court: Yes.

Lawyer Gray: That's also true for all the defendants, Your Honor.

Mr. Nachman: In other words though, counsel for none of the defendants object to Plaintiff's Exhibit No. 365 on the grounds of authenticity.

Mr. Embry: We don't.

Lawyer Gray: No.

The Court: What is that No. 365 about?

Mr. Nachman: Your Honor, this relates again to the incident of March 8th, 1960 and shows two convictions and paid and not appealed for the two individuals. This is some more of that group of some thirty-odd that Mr. Matthews testified about. Now, if the Court please, we offer into evidence as Plaintiff's Exhibit 365 these two pages which relate to the conviction of Jefferson Underwood for disorderly conduct and for Alean R. Underwood for disorderly conduct which shows that the fines were paid and that there was no appeal made to this Court.

(Recorder's Court record of Jefferson Underwood, dated March 8th, 1960, as No. 89426, offered and received in evidence and identified as Plaintiff's Exhibit No. 365 and Recorder's Court record of Alean R. Underwood, dated March 8th, 1960, No. 89418, offered and received in evidence and identified as Plaintiff's Exhibit No. 365.)

L. B. SULLIVAN, having been duly sworn, was called as a witness in his own behalf and testified as follows:

Direct examination.

By Mr. M. R. Nachman, Jr.:

Q. Will you state your full name, sir?

[fol. 1827] A. L. B. Sullivan.

Q. Are you the plaintiff in this case, sir?

A. I am, sir.

Q. Are you presently one of the Commissioners of the City of Montgomery, Alabama?

A. I am, sir.

Q. Would you state which office you hold and what the duties of that office are?

A. Commissioner of Public Affairs and the duties are supervision of the Police Department, Fire Department, Department of Cemetery and Department of Scales.

Q. You are charged with the supervision and overall control of the Police Department. Is that correct, sir?

A. Yes, sir.

Q. You took office, I believe we stipulated, in October of last year, in 1959.

A. On October 5th, 1959. That is correct.

Q. Would you state what position you held immediately prior to coming into your office in October of 1959?

A. I was employed as Safety Director for the P. C. White Truck Lines.

Q. How long did you hold that position?

A. For approximately two years.

Q. Am I correct in stating, sir, that you were at one time Public Safety Director for the State of Alabama?

A. That's right, sir. From April 1st, 1951 until January of 1955.

Q. Did you before that time hold any other position with the State of Alabama?

A. I did. I was employed at the Public Service Commission from 1947 until 1951.

Q. In what capacity did you work there?

A. I was first an Inspector with the Transportation Division of the Public Service Commission and later was Chief Inspector of the same division.

Q. Did you in the course of those duties concern yourself [fol. 1828] with the transportation or regulation of the transportation companies and motor carriers?

A. My primary work was in enforcing the regular laws regulating transportation of motor carriers.

Q. You said motor carriers and not railroads?

A. That's right.

Q. There is a separate division in the Public Service Commission for that.

A. That's right.

Q. I take it that you did not concern yourself with such matters as rates and things of that sort.

A. No. I did not. The principal duties were that of enforcement.

Q. Is it fair to say, sir, that you have spent a considerable portion of your time of service in the transportation field?

A. Yes. Several years. Either directly or indirectly.

Q. Have you also worked for a considerable period of time in the public safety field?

A. Most of my adult life has been spent in those two areas, in transportation and public safety type work.

Q. Have you held any position with any organizations in either of those fields which was national in scope?

A. At one time I was Field Representative in the International Association of Chiefs of Police in the Southern territory.

Q. Would you tell the Court and jury what that association does in a general way and what you did as Field Representative for the association?

A. The association itself is composed of police executives throughout this country and other countries. My particular duties was working with other police departments in making studies of their operations and recommendations for improvement and implementing some of the programs such as police training.

Q. Mr. Sullivan, I show you Plaintiff's Exhibit No. 347 which is the ad in The New York Times which is in con-

troversy in this case. I ask you to look at it and tell the Court and jury whether you are familiar with it and whether you have read it.

[fol. 1829] A. I am familiar with it and I have read it.

Q. I take it you have discussed it at some length with me.

A. I have.

Q. And with my partner.

A. Yes, sir. With you and other counsel representing me here today.

Q. I call your attention, Mr. Sullivan, to the third paragraph in the left hand column of this ad which reads as follows: "In Montgomery, Alabama, after students sang 'My Country, 'Tis of Thee' on the State Capitol steps, their leaders were expelled from school, and truckloads of police armed with shotguns and tear-gas ringed the Alabama State College Campus." I ask you if that statement is true or false?

Mr. Embry: We object to that, Your Honor. It calls for a conclusion on the part of the witness and it invades the province of the jury and there is no foundation laid for that question—

The Court: I will overrule the objection and give you an exception.

The Witness: That statement is—

Mr. Embry: Just a minute. We assign all of the other grounds, Your Honor, that we—

Mr. Nachman: Everything that you can to—

Mr. Embry: Everything in regard to the series of witnesses who testified as to their opinion as to what they thought from the ad or associated in their minds and we assign the same series of grounds that we assigned when we objected before and that it is not framed within the issues of the case—

Mr. Nachman: We will stipulate that counsel can assign in the Record any objections now made and any objections that may occur to them later if that is agreeable?

Mr. Embry: Yes, that's what I—

Lawyer Gray: That is applicable to us as well—

Mr. Nachman: Yes, it is applicable to all counsel in the case.

Mr. Embry: And, specifically, that the truth or falsity of it is not in issue.

[fol. 1830] By Mr. M. R. Nachman, Jr.: (Continuing)

Q. You may answer the question, sir.

A. The statement in question is in my opinion completely false and I resented it very much when I read the fact that it had been made.

Mr. Embry: We move to exclude what he resents, if the Court please.

The Court: I will let it in and give you an exception.

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Now, Mr. Sullivan, I call your attention to the next sentence in that same paragraph which reads as follows: "When the entire student body protested to state authorities by refusing to re-register, their dining hall was padlocked in an attempt to starve them into submission." Is that statement true or false?

A. False.

Mr. Embry: Same objection, if the Court please.

The Court: Same ruling and you have an exception.

The Witness: False. In my opinion, it has never happened here in the City of Montgomery.

Mr. Nachman: Now, I call your attention to—

Mr. Embry: We move to strike his opinion, if the Court please.

The Court: You move to strike what?

Mr. Embry: We move to strike his answer purporting to be an opinion or a conclusion.

The Court: I will let it in and give you an exception.

Mr. Embry: How wide are we going to get, Your Honor? Are you going to let him make a speech—

The Court: Well, he asked him about truckloads of police armed with shotguns and he said that he didn't do it. I don't see where that's any conclusion.

Mr. Embry: He didn't say that though, Your Honor. He didn't ask him about anything in there as to facts. He

asked him about the truth or falsity of it and he read him an article.

[fol. 1831] The Court: Well, let him ask the question again and we'll see. Ask the question again, Mr. Nachman.

Mr. Nachman: I read the statement to him, Your Honor—

The Court: Something about padlocking, wasn't it?

Mr. Nachman: Yes, Your Honor, and I asked the witness whether the statement was true or false—

Mr. Embry: And we object to that. No predicate has been laid for that question.

The Court: I will let it in.

Mr. Nachman: Is that true or false?

The Witness: False.

Mr. Embry: No predicate has been laid for that question. We except.

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Now, I call your attention, Mr. Sullivan, to the last paragraph at the bottom of the second column which reads as follows: "Again and again the Southern violators have answered Dr. King's peaceful protests with intimidation and violence. They have bombed his home almost killing his wife and child." I ask you whether the Police Department has during your term of office or at any other time within your knowledge bombed Dr. King's home or been a party to it or condoned such action?

Mr. Embry: We object to that, Your Honor. Nobody could read that language and conclude that it imported that the police bombed his home. This is fantastic, Your Honor—

The Court: That may be but if it comes within these pleadings, I will let it in.

Mr. Embry: We except.

Lawyer Crawford: Your Honor, we would also like to interpose the same objection on the same grounds and further that if this witness is considered in his Police Department—and his Police Department considered law violators then, of course, it applies, but if he is not a law violator, then I don't see how in the world it could apply—

The Court: Well, we have a lot of jury questions in here [fol. 1832] and I take it that is one of them. It is set forth in the pleadings here and I will let it in and give you an exception.

Mr. Nachman: Your Honor, we made the stipulation which I just agreed to a few minutes ago and that is we would allow any grounds of objection to be assigned now or at any other time in order to expedite the saving of time for the Court, but if counsel is going to make a speech every time, then we are going to withdraw the stipulation and let them state their objections here and now.

Mr. Embry: That's certainly all right with us, Your Honor, and I am going to certainly call it to Your Honor's attention any time I think that the witness is going outside of the bounds of common sense and reason and the law.

Lawyer Gray: Let me see if I understand this now. Are you withdrawing the stipulation, Mr. Nachman?

Mr. Nachman: I am going to if—I see no reason to keep that agreement if we are going to have all of this sort of thing on every question. You may answer the question.

The Witness: To my knowledge there has never been any incident or bombing or in any way assaulting any person as charged in this advertisement.

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. That includes the next sentence, "They have assaulted his person." Is that correct, sir?

A. That's right.

Q. Now, I ask you, Mr. Sullivan, whether to your knowledge it is accurate that "They have arrested him seven times—for "speeding," "loitering" and similar "offenses."

Mr. Embry: We object to that. It calls for an unauthorized conclusion on the part of the witness; it invades the province of the jury; it is not framed within the issues of this case; it has no probative value and it is incompetent, irrelevant and immaterial, Your Honor.

The Court: I will let it in and give you an exception.

[fol. 1833] Mr. Embry: We except.

Lawyer Crawford: We interpose a similar objection, Your Honor.

The Court: Same ruling.
Lawyer Crawford. We except.
The Witness: That is false.

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Mr. Sullivan, did you have anything at all to do with procuring the indictment of Martin Luther King on a charge of violating the Income Tax Laws of the State of Alabama?

Mr. Embry: We object to that, Your Honor. It calls for an unauthorized conclusion on the part of this witness; it calls for a mental operation and it is incompetent, irrelevant and immaterial. It invades the province of the jury and is not framed within the issues in this case. It is not responsive nor does it shed any light on any of the issues framed in this case, if it please the Court. It calls for an ultimate inquiry of fact which the jury must pass on, and it invades the province of the jury in that regard, if it please the Court.
The Court: I will let it in and give you an exception.
Mr. Embry: We except, if the Court please.
The Witness: Nothing whatsoever.
Lawyer Gray: We interpose a similar objection.

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Did you testify in that case either before the Grand Jury which indicted him or before the petty jury which tried him?

Mr. Embry: We make the same objection on the same grounds previously assigned, Your Honor.
The Court: Same ruling.
Mr. Embry: We except.
Lawyer Crawford: We except.
The Witness: I testified at the trial.
Mr. Nachman: You did testify at the trial.
[fol. 1834] The Witness: I did.

By Mr. M. R. Nachman, Jr.; (Continuing)

Q. Did you testify with regard to the guilt or innocence of the defendant?

Mr. Embry: We object to that on the same grounds previously assigned, Your Honor.

The Court: Same ruling.

Mr. Embry: We except.

Lawyer Gray: Exception.

The Witness: I testified as to conditions that existed here in Montgomery.

Mr. Nachman: Namely as to whether he could get a fair trial—

Mr. Embry: We object to that—

Lawyer Crawford: We object to that, Your Honor—

Mr. Nachman: I withdraw the question.

The Court: The question is withdrawn. Go ahead.

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. What was your testimony about in a general way, sir?

A. As I recall, the question was asked—

Mr. Embry: We object to that on the same grounds, Your Honor. Now, Mr. Sullivan, you have been examined before. I took your deposition up here about two weeks ago and as I understand it, sir, you are a highly intelligent man. Now, you know better than to answer those questions which deprives me of the right to object, don't you?

Mr. Nachman: Now, Your Honor, we are going to object—

Mr. Baker: We certainly object to that—

Mr. Steiner: Your Honor—

Mr. Embry: I have a right to—

The Court: Yes, that is arguing with the witness.

Mr. Embry: We object—

Mr. Nachman: May I call Your Honor's attention—

[fol. 1835] The Court: One at a time now. One at a time.

Mr. Beddow: I would like to call Your Honor's attention to one thing—

The Court: One at a time.

Mr. Beddow: Your Honor, may I say—

The Court: Just a minute. I am talking now. Let me get through and then I will hear you one at a time.

Mr. Beddow: I beg your pardon, Your Honor.

The Court: Now, I am going to make this suggestion

and you can follow it if you want to. We are just repeating here and Mr. Embry has assigned the grounds that a question is incompetent, irrelevant and immaterial. The Supreme Court of Alabama has held that that is a general objection but it isn't any good—

Mr. Beddow: Your Honor—

The Court: All right, Mr. Beddow. Go ahead.

Mr. Beddow: Your Honor, would you permit me to remind the Court that he is now being called upon to testify to things that occurred within the four walls of that place where the inquisitorial body of this county was hearing testimony—

Mr. Nachman: No, sir.

Mr. Beddow: And he is asking him to recite the things that occurred before the Grand Jury of this county—

Mr. Nachman: I didn't—

The Court: Hold here just a minute. The question as I understand it was whether he could receive a fair trial in Montgomery—

Mr. Nachman: That's correct—

The Court: There is no testimony that shows he ever went before the Grand Jury or testified before the Grand Jury.

Mr. Nachman: Exactly, Your Honor.

Mr. Beddow: Well, we haven't asked for a change of venue in this case and now he is asking about someone else getting a fair trial—

The Court: Well, I think—

Mr. Beddow: We haven't challenged this point—

[fol. 1836] The Court: Well, I will let it in and give you an exception.

Mr. Embry: We except.

Lawyer Gray: Exception.

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. You may answer the question. Do you want me to repeat the question, Mr. Sullivan, or do you want the Court Reporter to repeat it?

A. If you will, yes.

Q. Would you state in a general way, sir, what your

testimony was at the trial of Martin Luther King, Jr. in this Circuit Court after the Grand Jury indictment?

The Court: Now, that was before a petty jury.

Mr. Nachman: Before the petty jury, yes, sir. After the Grand Jury indictment.

The Witness: My testimony during the trial was along the lines in response to the question as to whether or not Dr. King could receive a fair trial here in Montgomery.

Mr. Embry: Now, we move that be excluded on the ground that that could not conceivably under any stretch of the imagination shed any light on any issue in this case, Your Honor.

The Court: Motion denied.

Mr. Embry: We except.

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Mr. Sullivan, do you consider the statement that I have just read you from this ad, Plaintiff's Exhibit No. 347, referred to you and are associated with you?

Mr. Embry: We object to that, Your Honor. It calls for an unauthorized conclusion of opinion evidence by this witness—

The Court: Well, let me stick by my former rulings and I will give you an exception.

Mr. Embry: It invades the province of the jury and calls for the ultimate fact under inquiry by this jury and we except, Your Honor.

[fol. 1837] By Mr. M. R. Nachman, Jr.: (Continuing)

Q. You may answer.

A. I certainly do. The statements in this article concern the arrest of people—the statement concerning truckloads of police and as Commissioner of Public Affairs it is part of my duty to supervise the Police Department and I certainly feel like it is associated with me when it describes police activities.

Q. Do you feel that you have been damaged by these statements?

Mr. Embry: We object to what he feels, Your Honor.

Mr. Nachman: In your judgment, have you been damaged by these statements?

The Court: The term, in your judgment, will be all right.

Mr. Embry: We except.

The Witness: Yes, sir.

Mr. Nachman: Would you state how?

Mr. Embry: We object to that. That is what the jurors are here to pass upon—

The Court: Well, the ultimate question is going to be for the jury to decide but a man can tell whether these statements damaged him or not—

Mr. Embry: That is a feeling and a sentiment and an opinion, Your Honor—

The Court: I will give you an exception and let it in. Go ahead.

Mr. Embry: We except.

Mr. Nachman: You may answer.

The Witness: I certainly do. The statements contained in this ad that reflect upon my ability and integrity and certainly it has been established here that they are not true.

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Mr. Sullivan, I show you four documents which are in evidence here as Plaintiff's Exhibits numbered 355, 356, [fol. 1838] 357 and 358. These are four letters demanding retraction and I will ask you whether you ever received any reply from those four letters?

A. No, sir. I did not.

Q. Mr. Sullivan, I show you also Plaintiff's Exhibit No. 363 which is a letter from Lord, Day and Lord addressed to you and dated April 15th. I ask you, sir, whether other than that letter you have received any reply from the defendant, The New York Times, in regard to a demand for retraction?

A. This is the one and only reply that I received in reply to the requests for retraction.

Q. All right, sir. That's all.

Cross examination.

By Mr. T. Eric Embry:

Q. Mr. Sullivan, you say you felt hurt and that you were damaged by this ad that appeared in The New York Times on March 29th and you felt like you had been greatly injured by that.

A. I did, sir.

Q. By all thirty-five copies that came into Montgomery County—you heard the evidence about how many of those newspapers come into this county, didn't you?

A. I don't recall.

Q. Did anybody ever come up to you and tell you that they had read this advertisement of The New York Times in the newspaper other than leaving it on somebody's desk for the purpose of creating a law suit?

Mr. Baker: We object—

Mr. Nachman: We object to that question, the form of it, for the purpose of creating a law suit. There is not an iota of testimony in this case—

The Court: I think the question is bad.

Mr. Embry: Sir?

The Court: I think the question is bad.

By Mr. T. Eric Embry: (Continuing)

Q. Did you ever make a reply to Mr. Loeb's letter of April 15th?

[fol. 1839] A. I did not.

Q. As a matter of fact, you had no intention of replying. It made no difference to you whether any apology or retraction was made. You were interested in filing a law suit at that time. Wasn't that your sole purpose in making—

A. That was not. I think you will find in that letter it said those charges had been proven to their information substantially correct and I could see no reason for any further reply.

Q. And you didn't make any reply and you went on and filed a law suit, didn't you?

A. Yes, sir. The attorneys did.

Q. Did you ever read that advertisement in The New York Times?

A. I certainly have.

Q. When did you first read that advertisement? Who brought it to you and showed it to you?

A. No one brought it to me and showed it to me. I read the advertisement in the Mayor's office here in Montgomery and it was after the date it was published and between that time and the time the letter was written to The New York Times and the other defendants.

Q. And it was just like it exists right there in front of you on the witness stand now which was detached from the paper and laid on the Mayor's desk and you read it and you discussed about filing a law suit on account of that advertisement, didn't you?

A. Absolutely not. We discussed it. I discussed it with Mayor James and later on with Commissioner Parks.

Q. At that time you hadn't made up your mind to file a law suit.

A. At that time I hadn't talked to an attorney.

Q. And you did not read it in reading the newspaper. It was there detached from the newspaper laying before you and Mayor James and the other Commissioner.

A. I don't recall exactly whether it was detached or not and whether it was part of it or a single piece—

Q. When was this with reference to March 29th, 1960?

A. As I stated a moment ago, I said I don't remember [fol. 1840] the exact date. It was between the time the ad appeared in the paper and April the 8th when the request for retraction was written. I don't recall the exact date.

Q. And you are telling these gentlemen of the jury that when you read this statement, "In Montgomery, Alabama, after students sang 'My Country, 'Tis of Thee' on the State Capitol steps, their leaders were expelled from school, and truckloads of police armed with shotguns and tear-gas ringed the Alabama State College Campus," that you immediately concluded that charged you in having participated in what the recitation of that advertisement

purports to have happened out at the Alabama State College Campus. You and the other Commissioners—

A. I certainly did. Not only to myself but the Mayor and the other Commissioners.

Q. I asked you if you felt it referred to you?

The Court: He said he did.

The Witness: I certainly did.

By Mr. T. Eric Embry: (Continuing)

Q. Did you consider that when the statement in the advertisement "When the entire student body protested to state authorities by refusing to re-register, their dining halls were padlocked in an attempt to starve them into submission," charged you with having participated in some event wherein a charge was made that a dining hall was padlocked in an attempt to starve somebody and you read that and concluded that you were being charged with doing that?

A. That is the responsibility of the State Department of Education and I didn't—

Q. Did you—

Mr. Nachman: Let him answer, Mr. Embry.

Mr. Embry: Well, I am asking him—

Mr. Nachman: He is trying to answer—

By Mr. T. Eric Embry: (Continuing)

Q. Did you consider that it referred to you when you read this ad?

[fol. 1841] Mr. Nachman: We object to this question until the witness has had an opportunity to answer the previous question, Your Honor.

The Court: Well, let him answer the question if he can.

The Witness: As a part of the responsibility of the Police Commissioner and the Commissioner of Public Affairs, it is our responsibility to maintain law and order here in Montgomery whether it is at the campus or elsewhere. As far as the expulsion of the students is concerned, that responsibility rests with the State Department of Education.

Mr. Embry: We move that his answer be stricken as not responsive to my question.

The Court: Motion denied.

Mr. Embry: We except.

By Mr. T. Eric Embry: (Continuing)

Q. When you read this statement, "Again and again the Southern violators have answered Dr. King's peaceful protests with intimidation and violence," there in Mayor James' office, you immediately concluded that you were being charged—that you considered yourself a Southern violator and that had charged you with intimidating this Dr. King and being charged with assaulting his person and that's the conclusion you drew from reading that statement in Mayor James' office.

A. Based on that one particular statement—

Q. Can you answer that question—

The Court: He is trying to answer it. He said, based on the advertisement—

Mr. Embry: Your Honor, will you admonish this witness not to—

The Court: Well, you asked him if he thought that referred to him and he is trying to answer it and then you cut him off.

Mr. Embry: I want to ask him if he concluded that it referred to him. Is that the conclusion that you drew from reading that statement?

[fol. 1842] The Witness: That is a statement that is contained in a paragraph that I think definitely referred to me.

By Mr. T. Eric Embry: (Continuing)

Q. Did you make that conclusion at the time when you read it?

A. I did.

Q. And that when you read the statement in Mayor James' office that, "They have bombed his home almost killing his wife and child," you concluded that you were being charged with having bombed this man's home.

A. There again, it is in the same paragraph and it was

my conclusion that it referred to me and to the Police Department and the City Commissioners.

Q. And that you drew that conclusion from the words you read in that article or advertisement. Is that right?

A. I drew that conclusion from that paragraph. Yes, sir.

Q. And you drew the conclusion from the words contained in this advertisement, "They have arrested him seven times—for 'speeding,' 'loitering' and similar 'offenses,' as charging you with having arrested this man for the offenses that were set out in that statement, 'Speeding,' 'loitering' and similar 'offenses.'" From reading that, you concluded that you were being charged with having arrested this man. Is that correct, sir?

A. By virtue of being Police Commissioner and Commissioner of Public Affairs, any activity on the part of the Police Department, certainly. I feel that—

Q. That's a question that directs itself to this jury and I am asking you if your conclusion was that it charged you with having arrested this—

A. Yes, sir.

Mr. Embry: We move that the previous answer be excluded, Your Honor.

The Court: Motion denied.

Mr. Embry: We except.

[fol. 1843] By Mr. T. Eric Embry: (Continuing)

Q. And the recitation you read that says, "And now they have charged him with perjury—a felony under which they could imprison him for ten years," when you read those words, you concluded that you had been charged with bringing about a charge against this man for perjury. Is that the conclusion that you drew?

A. Those words contained in the paragraph that I answered to just a moment ago that I felt like that it did apply to both myself and the other Commissioners.

Q. Now, you assumed the office of the Commissioner of Public Affairs in the City of Montgomery in October of 1959, didn't you?

A. That's right.

Q. And what ever may have occurred—the events with respect to any bombing that you heard testimony about—the arrest of this man at the City Hall that you heard testimony about and these arrests made for speeding, loitering and similar offenses and his indictment—this man's indictment—under a charge of falsification of Income Tax Return and for perjury—which of those events occurred after October 5, 1959 and which of those events occurred since you have been holding office as Commissioner of Public Affairs in the City of Montgomery?

A. Well, in reading that ad, it would be difficult to tell. Some of the events did occur before I took office as Commissioner of Public Affairs. At the very beginning of the first paragraph there—the first paragraph that is in question here that when they sang on the Capitol steps—that happened on March 1st of this year, 1960, and it goes on and relates these other incidents in the statement—in the ad which my interpretation of it was that they happened after March 1st of 1960.

Q. Did you ever order any of the police directly or tell any of the police officers to go out to this college campus and do anything out there—make any arrests or do anything out there on the campus? Did you ever give the police officers of the City of Montgomery detailed instructions or directions during this interim of time between March 1st to March 9th about going out to the Alabama [fol. 1844] State College and doing anything out there?

A. Yes, sir. I have.

Q. Did you directly supervise the activities of the Police Department on the occasion that this demonstration was occurring out there on the campus which resulted in the arrest of these thirty-five people—these thirty or thirty-five people that Mr. Matthews recited about from the record by name and—

Mr. Nachman: Your Honor, we object to the form of the question. The words, directly supervise, are not a clear cut—

Mr. Embry: Well, Your Honor, he stated that—

The Court: I think it is permissible and will give you an exception. Go ahead.

The Witness: I was not there personally supervising. I was in contact with Chief Ruppenthal who is the Chief of Police.

By Mr. T. Eric Embry: (Continuing)

Q. And Chief Ruppenthal is the Chief of Police of the City of Montgomery and was at the time these events occurred, wasn't he?

A. That is true.

Q. The Chief of Police under the exercise and function of his office was the police officer exercising and directing supervision over the activities of the police at the time these events occurred at the Alabama State College Campus during this period throughout from the 1st of January, 1960 up to the present time, isn't that correct?

A. With some exceptions. There was one occasion that he was not present that I directly supervised the activities.

Q. What occasion are you talking about now?

A. That was when the demonstration or the incident took place at the capitol on Dexter Avenue on March 6th, 1960.

Q. It wasn't the singing incident, was it? It was something else, wasn't it? Was it this occasion? Were you there either of those two times?

A. Yes, sir. I was there both times.

Q. Well, the time you just described was not the inci- [fol. 1845] dent of the singing, was it?

A. Well, I think there were efforts being made to sing.

Q. But that was not when the song was sung that we have been talking about in the advertisement.

A. No, sir. That occurred on March 1st.

Q. Now, you say in your Complaint that by the publication of this advertisement, that the matter contained in these two paragraphs that you complained of imputed to you improper conduct and that that subjected you to public contempt, ridicule and shame. Now, would you tell these gentlemen of the jury, please, Mr. Sullivan, when and where anyone has held you in public ridicule or contempt or shamed you since the publication of this advertisement?

A. Well, I—

Q. Tell us of anybody who has said something to you

that has held you up to public contempt or someone that has ridiculed you or some person that has caused you shame as a result of the publication of this advertisement.

A. To those who might have believed it—I don't recall any particular incident where anyone walked up to me and told me that they held me in ridicule but to those who might have read this article and believed it, certainly it is conceivable that they could have.

Q. And nobody believe it except those that may have read it—

A. That, I don't know.

Q. It is not your belief that they believed it, is it?

A. I have heard testimony to the effect here—those that testified said they didn't but I don't know about any others.

Q. Have you felt ridiculed since the publication of this article? Do you feel ill-at-ease in walking around the streets of Montgomery to the extent that whoever may have read this article—to the extent that you have been ridiculed by whomever may have read this article in the thirty-five copies that came into this county?

A. You are asking the question, did I feel ridiculed?

Q. Yes, sir.

A. You mean you are asking me—

[fol. 1846] Q. Well, you said you felt like it referred to you and now I am asking you have you felt ridiculed by it?

A. I haven't had anyone come up to me personally and make any reference or ridiculed me as concerns the ad. I haven't talked to—I talked to a number of people about it but I don't say that I have had anyone come up to me and say that they held me in ridicule on account of it, no. Of course, I don't know how many might have read the ad.

Q. Now, Mr. Sullivan, honestly and candidly, you have enjoyed an excellent reputation in Montgomery and in Montgomery County since you have been a resident here. That's your belief, is it not, and, in fact, that's true. You have enjoyed an excellent reputation and have been so considered by the public to enjoy a good reputation in this community where you live since you first moved here from Kentucky and you have been here continuously since World War II or before World War II and you have a good reputation in this community, don't you?

A. I have endeavored to try to earn a good reputation and that's why I resent very much the statements contained in this ad which are completely false and untrue.

Q. And that reputation which you have always enjoyed, you still enjoy, don't you, Mr. Sullivan?

A. I would like to think so. I have tried very hard to maintain it.

Q. If anything—I will ask you your judgment about this—if anything—since the publication of this advertisement on March 29th and the thirty-five copies of that newspaper that came into this county—you are not thought any less of and, as a matter of fact, your reputation, if anything, has been enhanced, has it not?

A. I don't know—

Q. You have been held in higher regard. Isn't that your honest judgment?

A. I don't know. There has been no contest of popularity and I haven't endeavored to conduct one.

Q. And you as the Public Affairs Commissioner of the City of Montgomery since October 5th, 1959, are compensated according to some schedule of compensation set up by law on a salary or a per annum basis, are you not?

[fol. 1847] A. That is true, sir.

Q. I don't know what it is and I am not interested in the amount as I am not prying into your private affairs but I want to ask you have you lost any of that compensation or that salary or stipend that you receive for your services to the public here after the publication of this advertisement?

A. I have not.

Q. Has anyone sought to cause your removal from office and to thereby seek to prejudice you in your office or profession or trade, which is the office of the Public Affairs Commissioner of the City of Montgomery, since the publication of this advertisement on March 29th, 1960?

Mr. Nachman: We object to the question, Your Honor, on the grounds that it equates someone seeking to remove him from office and the allegation that he has been prejudiced in his office and in terms of the allegation of the complaint and we maintain—

The Court: You think there is quite a difference between those two, do you not?

Mr. Nachman: We think so—

Mr. Embry: Your Honor, he has been permitted to give his thoughts and his ideas and his convictions and his ambitions and everything else and we think—

The Court: It doesn't say anything in the Complaint about kicking him out of office—

Mr. Embry: We except, Your Honor.

By Mr. T. Eric Embry: (Continuing)

Q. Has anyone threatened to have you removed from office after the publication of this advertisement?

A. To my knowledge, no, sir.

Q. Is your office or profession exactly the same today as it was prior to the publication of this advertisement? That is to say, are you still what you were prior to the publication of this advertisement with respect to language, title and compensation?

A. What period of time do you mean when you say prior?

[fol. 1848] Q. From October 5th when you assumed that office.

A. Yes. I still retain the same title. I still have the same office I did at that time.

Q. I assume that as any normal individual of your age and occupation and station in your community that you have a certain amount of social or pleasure activity as all normal people do. Is that correct, sir, do you go out in public?

A. Yes, sir.

Q. As a matter of fact, it is probably fair to say that as the Public Affairs Commissioner of the City of Montgomery you are probably out in the public as it were more than an average citizen. Would you say that's a fair statement?

A. I would say yes.

Q. You are married, I assume, and you have a family?

A. Yes, sir.

Q. In connection with those demands and responsibilities as the head of a family, you take your wife and children

to public places such as restaurants and theaters or to other peoples' homes to visit or to parties on occasions, do you not?

A. That's true, sir.

Q. And you did that before the publication of this advertisement, did you not?

A. Yes, sir.

Q. Have you on any occasion since the publication of this advertisement on March 29th of which you complained in the Complaint been shunned by anyone within the company in which you found yourself placed in any public place or house of a friend or any restaurant such as you have visited since the publication of this advertisement?

A. Not that I can recall, sir.

Q. I will ask you to give me your fair judgment as to whether you have been ostracized by any segments of the society with whom you have associated since the publication of this advertisement?

A. I don't recall having been ostracized by any group of individuals. No, sir. Now, of course, if I were ostracized [fol. 1849] and they avoided me, the chances are that I might not have known it.

Q. You haven't noticed any lessening in the number of your social acquaintances or friends since the publication of this advertisement, have you?

A. No, sir.

Q. Now, Mr. Sullivan, is it fair to state that your feeling that the recitations in this advertisement were incorrect or false with reference to the events and happenings in the City of Montgomery and those recitations as being a reflection on the community is what incensed you rather than any feeling that they had any reference to you?

A. No, sir.

Q. You feel it as a direct personal reference to you by inferences which you have testified made you conclude that they did. Is that correct, sir?

A. It is my feeling that it reflects not only on me but on the other Commissioners and the community.

Q. But more particularly that it does reflect on you.

A. When it describes police action, certainly I feel it reflects on me as an individual.

Q. And you draw that conclusion from a reading of the portion of this advertisement about which you complained of in your complaint.

A. Yes, sir.

Q. And you didn't draw that from anything other than what that language seemed to mean to you when you read it.

A. I felt that as I mentioned before—

Q. Excuse me. Is that correct? You drew it only from what that language seemed to mean to you when you read it?

A. I drew it from reading the ad. Yes, sir.

Q. All right, sir. That's all.

Cross examination.

By Lawyer Crawford:

Q. Mr. Sullivan, do you consider your police force to be Southern law violators?

A. I certainly do not.

[fol. 1850] Q. Then, Mr. Sullivan, do you consider yourself as Police Commissioner a Southern law violator?

A. I don't consider myself a violator period. Southern or otherwise.

Q. Mr. Sullivan, as a result of your not being harmed, as you testified to, you are not held up in public contempt, you are not being ridiculed and you are not ashamed. The purpose of this law suit is the basis for state-wide publicity for running for another office. Is that not correct?

Mr. Nachman: We object to that, your Honor.

Mr. Baker: We object to that, if the Court please.

The Court: That's not a proper statement.

Lawyer Crawford: That's all. No further questions.

L. P. PATTERSON, having been duly sworn, was called as a witness for the Plaintiff and testified as follows:

Direct examination.

By Mr. Robert Steiner:

Q. State your name for the Record, sir.

A. My name is L. P. Patterson.

Q. Mr. Patterson, you, I believe, are one of the editors of the Montgomery Advertiser?

A. I am the Managing Editor.

Q. The Managing Editor of the Montgomery Advertiser?

A. Yes, sir.

Q. Mr. Patterson, as Managing Editor did you receive an issue of The New York Times of Tuesday, March 29th, in which this ad appeared on page 25 which I am exhibiting to you now?

A. I did, sir.

Q. I am referring to Exhibit No. 347 for the Plaintiff.

A. Yes, sir.

Q. Mr. Patterson, when you got it, what did you do with it?

[fol. 1851] A. Well, first, I read it.

Q. All right, sir. After you read it, what did you do with it?

A. Well, there were some facts in here that were strange to me that I had never heard before.

Mr. Embry: If the Court please, we object to that as not being responsive to the question.

The Court: I will let it in and give you an exception.

Mr. Embry: We except, if the Court please.

By Mr. Robert Steiner: (Continuing)

Q. You may continue, sir.

A. I instructed the City Editor to immediately check with the Alabama State College officials on the truth of padlocking the dining hall.

Q. All right, sir. Now, I will ask you—

Mr. Embry: We move to exclude that, if the Court please. What he instructed the City Editor to do is certainly not within the issues of this case, if the Court please. Whether he checked on the truth of it or not or whether it was true to this witness or not—

Mr. Steiner: Your Honor, the ad charges that the dining hall was padlocked and he, as a newspaper Managing Editor, checked the accuracy of that statement.

The Court: Can he testify as to his personal knowledge or—

Mr. Steiner: No, sir. Just the fact that he did, Your Honor.

The Court: Well, if he has no personal knowledge of it, I kind of doubt if he can testify.

Mr. Steiner: All right, sir, are you sustaining the objection?

The Court: Yes.

By Mr. Robert Steiner: (Continuing)

Q. Mr. Patterson, did you or did you not put that ad on Mr. Grover Hall's desk?

[fol. 1852] A. I did.

Q. That's all.

The Court: He is the Chief Editor, isn't he?

The Witness: Yes, sir. He is my Superior.

Mr. Embry: We have no questions, Your Honor.

Lawyer Gray: No questions.

The Court: All right. Who do you have next?

PLAINTIFF RESTS

Mr. Nachman: The Plaintiff rests, if the Court please.

Lawyer Gray: Your Honor, the defendant has a Motion and we would like to be heard on it outside of the presence of the jury.

The Court: All right. Let me see the Motion first. Gentlemen of the jury, you may rest for a few minutes while we go in the back room here and discuss a few points of law.

(Motions presented to Court in Chambers.)

MOTION OF DEFENDANTS TO EXCLUDE THE PLAINTIFF'S CASE AS APPLIES TO THE FOUR DEFENDANTS AND DENIAL THEREOF

Lawyer Gray: Your Honor, this is a Motion to Exclude the plaintiff's case as applies to these four defendants. The plaintiff has failed to make out a prima facie case. The evidence conclusively shows that there is just two references to these defendants in all of the testimony introduced. One, their names appear on a printed ad—not signed, but printed. No testimony has been introduced by the plaintiff to the effect that this ad was, in fact, produced by these defendants or that they paid for it or that they gave their consent to the use of their names in connection with the ad. Second, the only other reference to these defendants are the letters that were sent by Mr. Sullivan to these four defendants asking them for a retraction. If this matter should go to the jury under the evidence presented by the plaintiff, any verdict against these defendants would amount to a denial of due process and a denial of equal protection of the law amounting to a taking of their property without due process of law. The plaintiff failed completely to present any evidence at all to show that these defendants, in fact, published this matter. That is our position, Your Honor, and we feel it is a proper one and we are asking the Court to exclude [fol. 1853] the evidence of the plaintiff as applies to the four named defendants we are representing.

The Court: All right. I will hear you gentlemen on the Motion.

(Argument presented to the Court by counsel.)

The Court: I will deny the Motion and give you an exception.

Lawyer Gray: If the Court please, we except.

MOTION IN BEHALF OF DEFENDANT, THE NEW YORK TIMES TO EXCLUDE AND IN THE ALTERNATIVE TO PRESENT A MOTION FOR A DIRECTED VERDICT AND OVERRULING THEREOF

Mr. Embry: If the Court please, we want to make a Motion to Exclude in behalf of the defendant, The New York Times, and in the alternative, to present a Motion

for a directed verdict and I wish to argue briefly in support of the Motion.

(Argument presented to the Court by counsel.)

Mr. Embry: For the Record, I call the Court's attention to the fatal variance between the pleadings and proof which would entitle the defendant, The New York Times Company, to a directed verdict. We are not waiving our grounds of demurrer because since the evidence is all in there has been a complete failure to supply those omissions under the evidence so as to make it a jury question.

The Court: I will overrule the Motion and give you an exception.

Mr. Embry: We except, if the Court please.

(At this point, Court and Counsel returned to the Court Room.)

The Court: Gentlemen of the jury, at this time we will adjourn for lunch and be back in the jury box promptly at 2:30. While you are outside, bear in mind what I have said before about the case and don't talk to anyone about it and don't discuss the case at all. Be back in the jury box promptly at 2:30.

(At this point Court adjourned and reconvened at 2:20.)

[fol. 1854] Mr. Embry: Before we proceed, Your Honor, I would like to inquire of Mr. Nachman because I overlooked asking Mr. Sullivan about it while he was testifying—can we stipulate how many individuals make up and compose the Police Department of Montgomery?

Mr. Nachman: Do you know, Mr. Sullivan?

Mr. Sullivan: A total of 212.

Mr. Embry: Two hundred twelve?

Mr. Sullivan: That's right.

Mr. Embry: Does that include part time people as well as the regular force?

Mr. Nachman: We will get that information for you before the close of the case.

Mr. Embry: All right, sir. That will save a lot of talk.

GERSHON T. ARONSON, having been duly sworn, was called as a witness for the defendants and testified as follows:

Direct examination.

By Mr. T. Eric Embry:

Q. Will you state to the Court and jury your full name?

A. Gershon T. Aronson is my name. That is spelled G-e-r-s-h-o-n.

Q. Where do you live, sir?

A. In a suburb of New York City.

Q. By whom are you presently employed, sir?

A. By The New York Times.

Q. Were you an employee of The New York Times Company in March and during and through the entire month of March, 1960?

A. I was, sir.

Q. What department of the paper are you and were you an employee of during the period of time we were talking about between now and March of 1960?

A. I was on the National Advertising staff.

[fol. 1855] Q. Is there some description or designation as to what your job is with the National Advertising Staff?

A. Yes. I cover six categories of National Advertising.

Q. Well, what do you mean when you say you cover them?

A. I am a sales representative for The New York Times in six categories of National Advertising business.

Q. Do I understand by that that you mean you try to sell advertising?

A. Yes, sir. That is correct.

Q. What categories or what types of advertising do you try to sell?

A. Organizations and committees, office equipment, luggage and leather goods, toys, sporting goods and advertising agencies or institutional advertising.

Q. Would that be an instance where an advertising agency wants to advertise?

A. That's correct.

Q. In toys?

A. Yes, sir.

Q. Do you have any authority in your job and in your duties with The New York Times Company to either accept or reject advertising?

A. No, I do not.

Q. Is there another department within the advertising division or is there another division within the advertising department that has that responsibility?

A. Yes, sir. There is another department.

Q. Do you know by what name that department is called?

A. It is called the Acceptability Department.

Q. Now, I direct your attention to a period of time of either the 23rd or the 24th and you will have to tell me when I ask you in detail as to which of those dates this occurred—either the 23rd or the 24th day of March, 1960, on an occasion when a copy or a manuscript—when something was brought to you at your place of work where you were situated in The New York Times Company plant in New York City. Do you recall that at such a time something was brought to you by a man by name of John Murray?

[fol. 1856] A. Yes, sir. I recall that.

Q. And do you recall that the something that was brought to you was a typewritten manuscript or copy, so-called in the trade, I believe, of an ad which had a caption or headline, "Heed Their Rising Voices"?

A. Yes, sir.

Q. Now, will you tell these gentlemen of the jury, Mr. Aronson, first of all, do you recall the date on which this John Murray brought this manuscript copy to you?

A. Well, as I recall it, my recollection is that Murray came into the office late in the afternoon of a Thursday preceding the date of publication of that advertisement.

Q. I believe the calendar will show and indicate that's the 23rd day of March.

A. I believe it is.

Q. Is that your best recollection?

A. That's my recollection. Yes, sir.

Q. About what time of day or night was it?

A. Well, it was late in the afternoon. I would say somewhere in the neighborhood of from four to five P. M.

Q. Where were you situated in the plant or where was your office at the time it was brought to you?

A. Well, I was situated at my desk which is located on the corner against the wall there in the National Advertising Department.

Q. Is that on some particular floor of the plant? Is that more than a one story building?

A. Oh, yes. Our offices in our department are located on the second floor.

Q. Now, this National Advertising Department, is that a series of partitioned rooms or is that one great big unenclosed area such as you see here in this Court Room?

A. It is a large open office with the exception of one or two executive offices and there are no other private offices.

Q. Are there more than one or two people situated there?

A. Oh, yes.

[fol. 1857] Q. A large number of people are there or a small number of people.

A. A considerable number of people.

Q. I show you a photocopy of this exhibit A to the Answers of The New York Times Company to the Plaintiff's Interrogatories in order to direct your attention to that matter. Now, does that Exhibit A—look at Exhibit A, Mr. Aronson. This is it right here. Now, is that Exhibit A a photostatic copy of the typewritten sheets of paper that were brought to you there by this man, John Murray?

A. This appears to be an exact copy of the original manuscript that Mr. Murray brought into the office on that date.

Q. Well, did he walk up to your desk and ask to speak to you or how did it come about he came to see you there at your place of business on that occasion?

A. Well, I believe he inquired as to who would be the person that would handle an advertisement of this nature and whoever he made that inquiry of must have referred him to me.

Q. When he brought that to you, did he make himself known to you?

A. Yes, he introduced himself and gave me his name and he said that he represented a committee that wished to insert this advertisement in The New York Times just as soon as it could be done.

Q. Did you say anything to him in response to that inquiry or statement by him to you?

A. Yes. I said, well, do you have any specific date in

mind and he said, yes, we would like to run this very early next week.

Q. Did that bring any response on your part?

A. Yes. I realized that we would have a very short time in which to handle this order.

Q. Why is that so?

A. Well, because there are several steps that are necessary between the submission of a manuscript for an advertisement and the finished proof.

Q. Well, you have indicated to me and I want to ask you about it—is there some difference between what you do with regard to a manuscript type copy and typewritten sheets of paper than there is about what you do with a mat [fol. 1858] or a so-called finished copy brought to you by an advertising agent or agency? Is that clear? Have I made myself clear to you?

A. Yes.

Q. Is a mat something that is already made up so that you could pour lead in it or pour type in it and—

A. Yes, sir. That's correct. There is a great deal of difference in the matter of time on our part. With a manuscript of this kind, we would first have to have it laid out by our type people so that the sizes and arrangements of type would be indicated for the compositors, those who accept and set the advertisement in type.

Q. You mean by that in your own place of business with your own people?

A. Yes, sir. Our own people there at the Times.

Q. On that afternoon that you told us about, what if anything did you do with this manuscript copy or these typewritten sheets of paper that were brought to you by Mr. Murray?

A. We immediately, within a matter of a very few minutes, went up to our Advertisers Service Department which is on a different floor of the building and consulted with our Arts Director there as to typography as to the size and style and arrangement of the type.

Q. Is that sometimes referred to as the Production Department?

A. Well, no. That's a separate division.

Q. Was it taken to the Production Department too?

A. Not at that time.

Q. Was it later taken there?

A. Later it was, yes, sir.

Q. Now, at the time you took it to this production department later—when was it? The next morning?

A. No. Yes, that was the next morning. That must have been on a Friday.

Q. Did you cause a thermo-fax—this brown looking photocopy of the typed material to be made?

A. Yes, sir. I did.

Q. You caused that thermo-fax copy then to be sent to the [fol. 1859] Advertising Acceptability Department, did you not?

A. That is correct.

Q. Was there something brought to you along with the manuscript copy that we have been talking about—a letter?

A. Yes.

Q. I show you Exhibit B to the defendant, The New York Times Company's Answers to the Interrogatories propounded by the Plaintiff which is a letter with the letterhead of A. Philip Randolph and I will ask you if such a letter accompanied it?

A. Yes. This is a copy of the original letter.

Q. Did you have a thermo-fax copy made of that and sent along with the thermo-fax copy of this so-called manuscript we have been talking about?

A. I believe we did.

Q. Did you read this manuscript when it came in to you or when it was brought in to you by Mr. Murray?

A. No. I did not.

Q. Did you read this letter that came with it?

A. Yes, I read the letter.

Q. All right. Then, you put it into the process by which it becomes—

Mr. Baker: If the Court please, we object to the leading.

The Court: Yes, that would be leading, Mr. Embry.

By Mr. T. Eric Embry: (Continuing)

Q. What did you do with it then? I will ask you to state whether or not, after you did all of this you told us about,

it then became a part of the practice and procedure whereby it becomes a printed form which is referred to you as copy?

A. That was one step, yes.

Q. When did you next see this material?

A. I next saw a proof of this advertisement.

Q. Do you have with you the next thing that you saw after you did what you told us you did?

A. I saw this proof.

[fol. 1860] Mr. Embry: If the Court please, for the purpose of identification I would like to have these three sheets of paper marked and identified as Defendant's Exhibit No. 6.

Mr. Nachman: Mr. Embry, are there things on that No. 6 for identification there that we can't Cross Examine the witness about because they don't come within his jurisdiction?

Mr. Embry: Well, this is the same thing you already have there in the paper.

Mr. Nachman: Well, he will be able to testify about all the matters on it, will he not?

Mr. Embry: He will be able to testify about those that he knows about.

Mr. Nachman: Well, we will have no objection to it then.

Mr. Embry: If the Court please, we offer this in evidence as Defendant's Exhibit No. 6.

(Printer's Proof of Ad "Heed Their Rising Voices", dated March 28, and Order Blank for publication of the Union Advertising Service, 302 Fifth Avenue, New York 1, New York, dated March 28, 1960 and yellow inter-office memo, copy number 22, dated March 28, 1960, offered and received in evidence and identified as Defendant's Exhibit No. 6.)

By Mr. T. Eric Embry: (Continuing)

Q. Now, where did you leave the original manuscript?

A. I left the original manuscript with our Advertising Service Department.

Q. The Advertising Service Department?

A. Yes, sir.

Q. Is it the standard practice in the operation of the business there at The Times that those things are filed there in a file and kept for a period of thirty days and then destroyed?

[fol. 1861] Mr. Baker: We object to the leading, if the Court please.

By Mr. T. Eric Embry: (Continuing)

Q. Well, state whether or not it is the practice of The New York Times Company to keep them for thirty days and then destroy them?

A. Our practice is to keep material of this kind and then discard it after a period of thirty days.

Q. Was that done in this instance?

A. I believe it was, yes.

Q. Mr. Aronson, this blue piece of paper that is stapled to Defendant's Exhibit 6 and which is a part of Defendant's Exhibit 6—will you tell us what that is?

A. Well, that is an advertising agency insertion order authorizing The New York Times to publish this particular advertisement on the date specified on this order.

Q. Is that how they buy the ad?

A. Oh, yes. We couldn't publish anything without written authority from a recognized advertising agency.

Q. Now, in that particular instance, was that an order from a concern whose name is The Union Advertising Service?

A. That is correct.

Q. Now, you may refer to that if you need to in answering anything I ask you about it. From that document or insertion order an order for this space for The Union Advertising Service—does it appear on there in the order requesting the space—does the date and the time on which the copy is to be published in your newspaper? Does that appear there?

A. Yes, it does.

Q. What date does that specify?

A. Tuesday, March 29th.

Q. 1960?

A. Yes, sir. 1960.

Q. Now, is The Union Advertising Agency in the trade and business of publishing and advertising in New York City? Is that a recognized agency?

[fol. 1862] A. That is a regularly recognized agency doing business with various publications including The New York Times.

Q. Is it a reputable agency?

A. To the very best of my knowledge, it is.

Q. Did it enjoy the status with your newspaper of having credit, that is, did you charge this to their account and then bill them?

A. Oh, yes. This was accepted and approved.

Q. Before you had that brought to you and I believe you testified you didn't read it, I will ask you whether or not you had—well, I will withdraw that question. You may answer Mr. Nachman's questions. That's all.

Mr. Nachman: What is the Court's pleasure on the order of Cross Examination of this witness? Does the Court prefer the other defendants to go first as it makes no difference to us—

The Court: I imagine the plaintiff would be first. Go ahead.

Cross examination.

By Mr. M. R. Nachman, Jr.:

Q. Mr. Aronson, how long have you been with The New York Times in the advertising end of the business?

A. For twenty-five years, sir.

Q. Are you familiar with the company's policy regarding advertising in all of its aspects, that is, sales, acceptability and so forth?

A. Yes, sir.

Q. Referring to the ad which is in evidence identified as Plaintiff's Exhibit No. 347—I believe it is the same as the one you have there in your hand—why was this ad brought to your desk? Is that the regular procedure?

A. That's the regular procedure, yes. It would have to be placed in its proper routine as it were for processing.

Q. Is this ad in any kind of a special category as The Times would categorize it?

Mr. Embry: We object to that, Your Honor. We don't [fol. 1863] know what his question means.

Mr. Nachman: Well, I believe there was some testimony to the effect that it was an editorial type ad and that's what I am trying to find out.

Mr. Embry: We withdraw the objection.

The Court: Go ahead.

By Mr. M. B. Nachman, Jr.: (Continuing)

Q. Is that correct, sir?

A. I would call it an editorial type ad.

Q. Is that within your specialty too?

A. Yes, it is.

Q. Now, what makes an ad an editorial type ad as distinguished from some other type ad as The New York Times categorizes it?

A. Well, I should say it is the type ad that expresses or puts forth a point of view.

Q. And those ads are put into a separate category, are they not?

A. Yes, sir. We consider them all under the general heading of advertising of organizations and committees.

Q. And The Times has certain of its employees such as yourself who specialize in ads of that sort as distinguished from other kinds of ads.

A. Ads of this kind would come within my particular duties.

Q. Now, you are familiar, I take it, with The New York Times Advertising Acceptability standards, are you not? And I show you this booklet here.

A. Yes, sir.

Q. Is it the policy of The Times that all of the standards and procedures set out in that booklet should be followed in the consideration of all advertising which is submitted to The New York Times for publication?

A. That's their policy.

Q. Was that policy followed in the case of this ad?

A. I think it was.

Q. Well, was it? Is that a qualified answer or is it a definite unqualified answer?

A. Well, I am giving you the answer insofar as I am able to give it.

[fol. 1864] Q. Were the signatures on that ad when it was submitted the signatures of the persons whose names appear on the bottom of it?

Mr. Embry: We object to that. He assumes that they were—

Mr. Nachman: Were they or weren't they? That's what I asked him.

The Witness: Most of them were. There were a few changes made I believe, prior to publication.

Mr. Embry: I don't think he specified whether they were typed on here or whether somebody had signed them—

The Witness: They were—

Mr. Embry: Were they signatures or were they printed? That's what he meant.

The Witness: They were in manuscript form. They were typewritten. They were not in handwritten form.

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. They were not signed by a signature.

A. No. That is correct.

Q. What basis did The Times have for assuming that the persons whose names were typed on the bottom of that manuscript had actually put their names to it or had authorized the use of their names?

A. Well, we had a written communication confirming the fact that the persons whose names were given here had authorized it.

Q. You are referring now, I take it, to the letter from A. Philip Randolph. Is that right?

A. Yes.

Q. On what basis did you satisfy yourself that he was giving you accurate information about the permission to use the names?

Mr. Embry: We object to that, Your Honor.

The Court: I will overrule the objection and give you an exception.

Mr. Embry: We except.

[fol. 1865] By Mr. M. R. Nachman, Jr.: (Continuing)

Q. You may answer the question.

A. Would you kindly repeat the question, please, sir?

Q. The question was, on what basis did you for The Times assure yourself that these people had actually given permission to use their names?

A. Well, I personally would not be responsible for that but I might say that a letter of this kind is our usual authorization. It is our usual practice to accept letters of this kind as authority.

Q. Who is A. Philip Randolph?

A. I believe that he is, among other things, the head of a Railroad Pullman Car Union.

Q. Do you know whether or not he is personally acquainted with all of the people whose names appear on that ad?

A. I do not know that.

Q. Do you consider that the statement he has in this letter which is identified as Exhibit B attached to the Interrogatories which Mr. Embry showed to you and I will quote from it, "Please be assured that they have all given us permission to use their names in furthering the work of our committee." Do you consider that as being authorization to put their names on an ad which is to appear in a national publication?

Mr. Embry: We object to that as being argumentative, Your Honor.

Mr. Nachman: I want to know, Your Honor, what they meant—

The Court: I will let it in and give you an exception.

Mr. Embry: We except.

The Witness: We would so consider it.

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. It doesn't specifically mention an ad in the paper though, does it? Let me show you the letter. I don't want to confuse you. This has been identified as Defendant's Exhibit No. 7.

A. That is correct.

Q. It does not mention an ad.

[fol. 1866] A. It does not.

Q. I assume, Mr. Aronson, that the original letter was actually signed by A. Philip Randolph. This photocopy shows no signature.

A. That's my recollection.

Q. Now, Mr. Aronson, do you consider that there are any ambiguous words or misleading words contained in this ad?

Mr. Embry: We object to that, if the Court please. He testified he didn't read it.

Mr. Nachman: Would you mind looking at it now?

Mr. Embry: Well, Your Honor, it not a question of what he thinks now. Prior to the publication—

Mr. Nachman: Let me re-phrase the question.

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Mr. Aronson, are you part of the process whereby the Times applies its advertising acceptability standards set out in this booklet that I have shown you?

A. I should say only to a limited extent.

Q. To what extent, sir?

A. If there was something that was obviously contrary to our policy and regulations, in order to save time I would have it changed or endeavor to have it changed.

Q. All right, sir. Then, I will ask you when you read that ad—when it was submitted to you—whether you found anything in that ad which to use the words of Item 3 on the second page of this booklet contained any words that are quote "ambiguous" or "which may mislead." Did you consider that there were any words in that ad which fell into that category when you looked at it on the day it was presented to you?

Mr. Embry: We object to that, if the Court please. He has already testified that he did not read the ad, Your Honor.

The Court: I will let it in and give you an exception.

Mr. Embry: We except.

Mr. Nachman: They didn't even read the ad?

The Witness: I did not consider that there were passages [fol. 1867] in here that would come into that.

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Well, now, the first thing that I would like to know is whether Mr. Embry is correct when he says that you didn't even read the ad when it was submitted to you?

A. I did not fully read it. I scanned it very hurriedly.

Q. Is that a part of the process of applying the acceptability standards—a hurried scanning of the ad?

A. Well—

Mr. Embry: Mr. Aronson, give me a chance to get my objection in before you answer. We object to that, if the Court please—

The Court: I think that question is admissible. He can answer it if he can.

Mr. Nachman: You may answer the question.

The Witness: Would you please repeat that question?

Mr. Nachman: Will you read the question, Mr. Reporter?

The Reporter: Question: "Is that a part of the process of applying the acceptability standards—a hurried scanning of the ad?"

The Witness: Yes, because there are other points at which the acceptability is further considered beyond me.

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. At what point, sir?

A. Well, at our Acceptability Department.

Q. Did this ad go to the Acceptability Department?

A. I believe it did.

Q. Now, I call your attention to the third paragraph on the left hand column and I ask you to read the first sentence and ask you whether you consider there is anything ambiguous in the use of the word "after" in that sentence?

Mr. Embry: Your Honor, there is no Complaint about any ambiguity in it and, as a matter of fact, to the contrary. They claim it is very clear.

[fol. 1868] The Court: Well, he is going into the standards of the acceptability of it. I will let it in and give you an exception.

Mr. Embry: We except, if the Court please.

The Witness: I would not consider that word ambiguous.

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. What do you consider it means?

A. Well, just what it actually says. It gives an order in time in which these events occurred.

Q. And order in time.

A. Yes.

Q. The sentence is, "In Montgomery, Alabama, after students sang 'My Country, 'Tis of Thee' on the State Capitol steps, their leaders were expelled from school, and truckloads of police armed with shotguns and tear-gas ringed the Alabama State College Campus." Now, it is your testimony, I take it, as a man with over twenty years of experience in reading ads with ambiguous words, that the word "after" means only after in terms of time and has no cause and effect connotation at all.

Mr. Embry: Don't answer that. We object to that, Your Honor. That is pure argument. It invades the province of the jury and he is arguing with the witness, Your Honor. There is not any issue about that in this case and what this witness thinks the word means wouldn't shed any light on the issues in this case.

Mr. Nachman: If the Court please, their own standards say that they should not accept wording that is ambiguous or misleading. Now, this man was put on this witness stand as the man who was presented with this ad and who was one of the persons to determine whether or not it should be accepted and I want to know from him whether in the terms of the standards that The New York Times laid down that he, as a person who was a part of that process, considers that this word, "after" is ambiguous or whether it has a single, simple, plain meaning.

Mr. Embry: Your Honor, what he thinks about it wouldn't be any issue in this case even if it was accepted—

Mr. Nachman: Your Honor, they are claiming that this

[fol. 1869] was all an innocent process on their part and we want to know what the process was and how they looked at it.

The Court: I think it is admissible. I will give you an exception to each question along this line.

Mr. Embry: If the Court please, he previously testified that he scanned the ad—

The Court: I will let it in and give you an exception to each and every question.

Mr. Embry: We except.

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. You may answer, sir, as to whether or not the use of the word "after" in that sentence to you connotes only a time sequence or whether it could also denote a cause and effect relationship, that it, because they sang "My Country, 'Tis of Thee" that these other events took place.

A. I only considered it, as I said before, in a time sequence but I would like to say that I did not examine the ad that closely.

Q. Would you state now, sir, what that word means to you; whether it has only a time meaning or whether it also to your eye and mind has a cause and effect meaning?

Mr. Embry: Now, we object to that, Your Honor. That's a question for the jury to determine—

The Court: Well, of course, it probably will be a question for the jury, but this gentleman here is a very high official of The Times and I should think he can testify—

Mr. Daly: I object to that, Your Honor. He isn't a high official of The Times at all—

Mr. Embry: He is just a man that has a routine job there, Your Honor. He is not—

The Court: Let me give you an exception to the Court's ruling.

Mr. Embry: We except.

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. You may answer.

[fol. 1870] A. I see it only in its time sequence.

Q. Now, I call your attention to the last paragraph at the bottom of the second column which reads as follows: "Again and again the Southern violators have answered Dr. King's peaceful protests with intimidation and violence. They have bombed his home almost killing his wife and child. They have assaulted his person. They have arrested him seven times—for "speeding," "loitering" and similar "offenses." And now they have charged him with "perjury"—a felony under which they could imprison him for ten years." I will ask you again, bringing to bear your judgment and experience that you have gained in your job for over twenty years if you consider there is any distinction between the various "theys" that appear in that paragraph?

A. Well, I consider that those words refer to the first sentence, "Southern violators."

Q. And that the same people are "they" throughout. Is that it?

Mr. Embry: We object to that. Is it understood, Your Honor, that we have an objection and exception to this whole line of questioning?

The Court: Yes. You may have an exception to this entire line of questioning.

Mr. Embry: We object to it on the grounds that it calls for an unauthorized conclusion and invades the province of the jury and it has no probative value on the issues in the case made up by the pleadings of the parties. We except and note a stipulation that we have an objection and exception to each question in the Record.

The Court: Yes. All right. Go ahead.

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. You may answer, sir.

A. Well, it is a very general term and applies, as I see it, to the first line of that paragraph.

Q. The question I asked you though was whether in your mind that the "they" as used at the beginning of each one of those sentences refers to the same people?

[fol. 1871] A. Well, it may have referred to the same people. It is rather difficult to tell.

Q. Now, I will ask you, sir, whether in terms of The New York Times Advertising Acceptability standards if you consider the use of the word "they" in that paragraph to come under this category, "Advertisements that are ambiguous in wording and which may mislead"?

Mr. Embry: Does that come under the Advertising Acceptability standards?

Mr. Nachman: Yes.

Mr. Embry: Do you have one of those booklets before you?

The Witness: I do.

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. It comes under the heading, "Following Is a List of Several Classes of Advertising The Times does Not Accept," and this is Item No. 3.

A. Personally I would not consider that to have been ambiguous in the meaning of this third paragraph in the booklet.

Q. But it is sufficiently unclear so that you can't today give a clear answer as to what it means, isn't it?

Mr. Embry: We object to that. He is arguing with the witness, if the Court please.

Mr. Nachman: Well, I believe the witness just said that it was not clear to him.

The Court: I will let it in and give you an exception.

Mr. Embry: We except.

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Is it clear to you today, sir, what the word "they" refers to as it is used repeatedly in that paragraph?

A. Well, I think now that it probably refers to the same people.

Q. Did you know John Murray who brought in the ad for publication?

A. I don't quite understand.

Q. I believe that you testified that a man by name of John Murray brought this in for publication.

[fol. 1872] A. Yes.

Q. Is he an employee of The Union Advertising Company?

A. No, sir. He is not.

Q. Did you know him personally?

A. No. I did not know him prior to the time that he came into the office.

Q. Had you ever seen him before?

A. I had never seen him before.

Q. Did he give you any credentials or did you ask for any credentials?

A. Well, he explained the authority—he explained the authorization for the publication—that the authorization for the publication of the advertisement would come from the Union Advertising Service.

Q. Did he give you the letter from Randolph or did that later come from the agency?

A. My recollection is that that come up by messenger a little later.

Q. Am I correct, Mr. Aronson, again within the terms of your knowledge as having been with The New York Times for over twenty years that investigations are frequently made by The Advertising Acceptability Department to develop further information or to determine the accuracy of statements? I am reading from the booklet here again.

A. That occurs, yes.

Q. Was any investigation made before the publication of this ad, the one in litigation now?

A. I would not know that, sir.

Q. Would you state to the Court and to the jury what circumstances bring about such an investigation as is referred to in this little booklet?

Mr. Embry: If you know?

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Yes, if you know and within the limits of your experience of twenty years or more with The New York Times Company.

A. Well, if there was something that was obviously objectionable or untrue.

[fol. 1873] Q. Could you give us an example or two of something that you as a person who worked in that department would consider so obviously objectionable that it would require further investigation or investigations?

A. Well, if there was the use of a superlative claim in the advertisement or a claim that a product is better than any other competitive product or service. This would obviously be objectionable.

Q. I assume then that any statement which is exaggerated would fall under the term superlative claim as you used it?

A. Well, not necessarily.

Q. A gross exaggeration?

A. Pardon me?

Q. A statement containing words of hyperbole—something that is grossly exaggerated or something of that sort?

A. If they were considered to be grossly exaggerated, yes.

Q. Now, sir, I would like for you to look at this advertisement identified as Plaintiff's Exhibit No. 347 and tell me whether you think there are any words in that which are of a superlative nature as you used the word?

Mr. Embry: We object to that, if the Court please. What he thinks of it now is not the issue. It would depend on what he thought of it at the time he saw the ad.

The Court: Well, the ad around March 29th—

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Well, that's the same ad that you saw in March, isn't it? It hasn't been changed any, has it?

A. I don't think so, sir.

Q. I don't think so either. It is the same now as it was in March and would you look at it, sir, and tell me now whether you think there are any words in there or phrases in there that are superlative in nature?

Mr. Embry: We object to that, if the Court please.

The Court: He is fussing over the word now. See if [fol. 1874] you can't get to March 29th.

Mr. Embry: The point of my objection, Your Honor, is that the only material thing would be what he thought about it at the time he accepted it—

The Court: The time he was in the process of getting the ad in.

Mr. Embry: Yes, Your Honor. And, if the Court please, he is not a member of the Acceptability Department which has that function.

Mr. Nachman: Is there anybody here from the Acceptability Department?

Mr. Embry: Yes, sir. The next witness may be able to answer your question.

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. I would like you to tell us if you can, Mr. Aronson, whether that ad—the ad that was handed to you on March 23rd and which was published on March 29th, contained superlative words or phrases as you have just used the term.

Mr. Embry: We have the same objections and same grounds to this whole line of questioning, Your Honor. I want to point out to Your Honor that this is still within the line of questioning that I am objecting to.

The Court: Yes.

The Witness: I do not see any such.

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. You don't see any such.

A. No.

Q. Now, may I look at the contract with the—

A. With the advertising agency?

Q. Yes.

A. Yes, sir. Here it is.

Mr. Nachman: What exhibit number is this, Mr. Embry?

[fol. 1875] Mr. Embry: It is Defendant's Exhibit No. 6, I believe. You will have to ask the Reporter.

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Mr. Aronson, since March 28th, 1960, which was the date this ad was inserted by The Union Advertising Service

of 302 Fifth Avenue, has The Times continued to do business with this agency as a recognized advertising agency?

A. I believe they have.

Q. Up to the present time?

A. Yes, I should say so.

Q. Now, am I correct, sir, or do you know, that complaints were made to The New York Times that the material contained in this ad was misleading and inaccurate?

A. I heard about that later.

Q. Am I correct in stating, sir, that one of the policies set out in this booklet on advertising acceptability—do you have the booklet there?

A. Yes.

Q. I call your attention now to this paragraph which I will read to y[illegible] "If any advertiser makes inaccurate or misleading statements and refuses to correct them, the advertising is declined. Further, if The Times receives complaints from its readers which, upon investigation, convince the Advertising Acceptability Department that the business practices of the firm are unfair or open to question, the Times declines further announcements of that firm."

Mr. Embry: We object to that, Your Honor. There is no evidence that this paper ever published anything except the ad in reference to the Committee to Defend Martin Luther King—

Mr. Nachman: I asked about the Union Advertising Service.

Mr. Embry: The language of the rule—

The Court: I will let the question in and give you an exception.

[fol. 1876] Mr. Embry: We except.

The Witness: Well, I believe that other advertising for other clients or advertisers has been received from the Union Advertising Service.

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. You accepted this, as I understand your Direct testimony, from the Union Advertising Service as a recognized reputable agency. Is that correct, sir?

A. That's correct.

Q. And you looked to that agency, I take it, to vouch for the accuracy and to vouch for the fact that this ad was up to standard, didn't you?

A. Yes.

Q. Am I not correct, sir, that when you find you have been done-in, so to speak, by an advertiser and you find that you cannot rely on him anymore, then this standard applies that I have just read to you?

A. Yes—

Mr. Embry: Your Honor, we object—

Mr. Nachman: He has already answered.

Mr. Embry: Don't answer until I have had a chance to object, Mr. Aronson—

The Court: Yes, I doubt that question—

Mr. Embry: We move to strike that, Your Honor—

The Court: Yes. I sustain the objection.

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Am I correct, sir, in stating that The New York Times has seen fit to—has not seen fit to apply the standard which I just read to you to The Union Advertising Agency?

Mr. Embry: We object to that, Your Honor.

The Court: At what time?

Mr. Nachman: Your Honor, the theory is this, sir. As I understand it, they claim before this Court and this jury that we accepted this advertisement from a reputable advertiser—

[fol. 1877] Mr. Embry: Now, I don't want Mr. Nachman saying what I say to Your Honor—

Mr. Nachman: I say, that's as I understand it. Now, as I also understand Mr. Aronson's testimony, included in their advertising acceptability standard is the provision that if an advertiser makes an inaccurate and misleading statement and so forth, then they do not accept any more announcements from his firm. Now, Mr. Aronson has also testified that they continued to accept advertising from this Union Advertising Service up to the present time and I am only trying to bring out that they did not apply this standard to the Union Advertising Service even though Mr.

Aronson testified that they had received complaints from their readers about this ad.

Mr. Embry: Apparently, Your Honor, Mr. Nachman doesn't understand the difference between an advertiser and an advertising agency.

Mr. Nachman: There's a lot about this I don't understand. That's just one of the things I don't understand.

Mr. Embry: You sure don't. We object on those grounds, Your Honor. He is arguing with the witness because the witness has not agreed with his definition of what an advertiser is.

The Court: I rather doubt if it would have any great evidentiary value and I will sustain the objection to it.

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Does that contract or the paper indicated as Defendant's Exhibit No. 6, Mr. Aronson, indicate how much The New York Times paid for this ad?

A. Well, it indicates the rate per agate line.

Q. Well, could you translate that into dollars for us, please, sir?

A. In the vicinity of $4,800.00. A little over that.

Q. At the risk of being repetitious, Mr. Aronson, I wish you would outline in as much detail as necessary what takes place in the ordinary course of publishing an ad from the time it is first submitted until the time it appears in the paper?

[fol. 1878] A. An advertisement—when an advertisement first comes into the office, if they are to be set in type by The New York Times, they are brought, if it seems necessary or desirable, to our Advertising Service Department. If it does not seem necessary or desirable to do that, they are routed into our Production Department and they in turn process the advertisement as to date, size and kind of advertisement and keeps a record of that on a separate group of sheets and then they send that manuscript to our composing room where the advertisement is sent to a compositor and set up in type form. Then, when the advertisement is completely set, proofs of that advertisement are sent down to the Advertising Department and other proofs go to other departments.

Q. At what stage does the Advertising Acceptability Department get into the picture? Does it get into it at an early stage or what? Does it get into it early or when it is already or when it is nearly ready for insertion in the paper?

A. It can happen either way.

Q. Is there any basis for determining which way it happens?

A. Well, it depends on how much time is available.

Q. It is more a question of time than content then. Is that it?

A. I would say that time has an important bearing on it, sir.

Q. Does it have as important a bearing as content?

Mr. Embry: We object to that, if the Court please. His conclusion about what is important without hypothetical facts upon which to base it—

The Court: I will let it in and give you an exception.

Mr. Embry: We except.

The Witness: It would be difficult to say which is more important in every case.

Mr. Embry: I withdraw my objection, Your Honor.

Mr. Nachman: All right. We have no further questions for this witness, Your Honor.

[fol. 1879] Cross examination.

By Lawyer Gray:

Q. Do you have Plaintiff's Exhibit No. 347 before you?

A. Yes.

Q. I would like to call your attention to the group of names at the bottom of that sheet. I am not talking about the first group of names but I am talking about the second group there. Now, will you read aloud the first name that appears there in the first column?

A. Reverend Ralph D. Abernathy.

Q. Now, will you tell the Court whether or not on this ad his name was subscribed to the ad?

A. His name was furnished in typewritten form and it was indicated that his name was to be inserted in this list.

Q. But it wasn't signed. It was typed to the ad.

A. That's my recollection.

Q. Now, will you tell the Court and the jury whether or not you or anyone from The New York Times prior to the date of publication of this ad—did you contact the Rev. Ralph D. Abernathy to ascertain whether he had given his consent for the use of his name on this ad?

A. I did not contact him.

Q. Did anyone from The New York Times contact him?

A. Not that I am aware of.

Q. All right. Now, let's take the next name, please, sir. Whose name is that? Read it aloud.

A. Reverend Fred L. Shuttlesworth.

Q. Was his name subscribed to the ad or was it typed?

A. I believe that it was typed.

Q. Did you or did anyone from The New York Times contact the Rev. Shuttlesworth to ascertain whether he had given his consent for his name to be affixed to this ad?

A. Not that I know of.

Q. Now, I call your attention to the third group of names, the one next up from the bottom and I ask you whose name appears there?

A. I beg your pardon?

[fol. 1880] Q. I call your attention to the third group of names under the same category, the second one from the bottom.

A. The Rev. S. S. Seay, Sr.

Q. Now, will you tell the Court whether or not his name was subscribed to the ad or whether it was typed on the ad?

A. I believe it was typed.

Q. Will you tell the Court and jury whether or not you or anyone from The New York Times prior to the date of publication contacted the Rev. Seay to determine whether he had given his consent for his name to appear on this ad?

A. Not that I am aware of.

Q. Now, I call your attention to the next column and the next to the last name. What name appears there?

A. The Rev. J. E. Lowery.

Q. I will ask you whether or not his name was subscribed to this ad or whether it was typed on it?

A. It was typed.

Q. Did you or anyone from The New York Times prior to the date of publication of this ad contact the Rev. Lowery to determine whether he had given his consent for his name to appear on this ad?

A. Not that I know of.

Q. Now, sir, on this letter that you testified was received at The New York Times from Mr. Randolph, Defendant's Exhibit No. 7, and on the original list of names that he assured the Times had given their consent—on that document did these four names—these four named defendants—were their names signed or were their names typed?

A. I don't believe their names appeared on that particular letter.

Q. That's all. Thank you.

[fol. 1881] D. VINCENT REDDING, having been duly sworn, was called as a witness for the Defendants and testified as follows:

Direct examination.

By Mr. T. Eric Embry:

Q. State your full name to the Court and jury.

A. D. Vincent Redding.

Q. I believe you are a resident of New York City?

A. A resident of Long Island.

Q. You are an employee of The New York Times Company?

A. That is correct, sir.

Q. How long have you been employed by The New York Times Company?

A. For five years and nine months, sir.

Q. Prior to that time, were you with another newspaper?

A. That is correct.

Q. Now, when you were initially employed by The New York Times Company, in what capacity were you employed some five years and nine months ago?

A. I was an Assistant to the Manager of the Advertising Acceptability Department.

Q. Now, during March of 1960 and in particular during the dates of the 23rd, 24th, 26th, 27th, 28th and 29th of that period of time, what was your title or classification of your job with The New York Times Company?

A. Manager of the Advertising Acceptability Department.

Q. Now, is that a division or a part of the national advertising department of The Times?

A. No, it is not.

Q. You are not an officer or a director of the management of The New York Times Company, are you?

A. I am not, sir.

Q. Now, in that acceptability department during the dates that I recited to you in March of 1960, how many people were employed in your department there?

A. At that time there were six.

[fol. 1882] Q. Does that department have some sort of function with the paper and I am handing you a little booklet we have been talking about before. Does that department have a function with the paper, and if so, tell us what that department's function is.

A. The department can be described as one that screens the advertising.

Q. Now, I direct your attention to an ad which is an exhibit in this case identified as Plaintiff's Exhibit No. 347 and ask you to go back in point of time. Do you have in your possession what is referred to as a manuscript copy together with a letter accompanying that manuscript copy?

A. I do, sir.

Q. It is a thermo-fax process of what later turned into that ad in print, is it not?

A. Yes.

Q. Well, let's get that out and look at it before we start anything else. Now, the Randolph letter consists of one sheet of paper, is that correct?

A. Yes.

Q. Now, this other one consists of six sheets of paper and is clipped together. Now, I ask you to state if this multiple group of sheets, the six of them, was what you saw and as to when you first saw it, we will get into that in

a minute, of the copy that was turned into this ad later? This was in your department I am talking about.

A. To the best of my recollection, that is correct.

Q. This very document right here I am holding.

A. That is correct.

Q. And this single sheet of a letter, is that the very document that you saw that time?

A. To the best of my belief, yes, sir.

Mr. Embry: Your Honor, we offer these two into evidence so that we can refer to them by number as we go along.

Mr. Nachman: We have no objections.

[fol. 1883] (Letter from A. Philip Randolph, 217 West 125th Street, New York 27, New York, dated March 23rd, 1960, to Mr. Jerry Aronson, New York Times, New York, New York, offered and received in evidence and identified as Defendant's Exhibit No. 7.)

(Manuscript of ad "Heed Their Rising Voices," offered and received in evidence and identified as Defendant's Exhibit No. 8.)

Direct examination.

By Mr. T. Eric Embry: (Continued)

Q. Now, there is some question probably in some peoples' minds as to whether these were attached together when you saw them. How did you first see them? Were they on your desk?

A. They were on my desk.

Q. How were they situated on your desk?

A. I cannot remember exactly. I don't know whether they were attached or not.

Q. Now, is this in the trade or business what is referred to as an editorial type ad?

A. Yes, sir.

Q. Now, in connection with your function of the Advertising Acceptability Department, is it routine that an editorial type ad comes across your desk?

A. It is. Yes.

Q. Is it routine that an ad that has imprinted on it—or a copy for an ad has imprinted on it persons' names that come across your desk—a group of peoples' names imprinted on it?

A. It is. Yes, sir.

Q. Did that happen in this instance?

A. Yes, it did.

[fol. 1884] Q. And this is what came across it.

A. Yes, to the best of my recollection.

Q. Now, do you recall—on that occasion, I assume you read this material, did you not?

A. I did.

Q. Did you have any knowledge or any information before you at that time from whatever source you may have gained that information and knowledge by reading or talking to someone else or anything that caused you to believe that anything in it was false?

A. I did not.

Q. And after reading it and not having before you anything that would cause you to believe that it was false, did you O. K. it for acceptance as an editorial type ad to be run as a paid advertisement in The Times?

A. I did.

Q. Now, did anything in that advertisement at the time you saw it—when did you see it? When did you see this manuscript on your desk? About when did you see it or do you have any recollection about it?

A. The nearest I can make it is about the 25th of March.

Q. Sometime during that day?

A. Yes, sir.

Q. Did anything you read in that ad cause you to believe that any of the contents of it were false?

A. Nothing whatsoever. No, sir.

Q. And not believing that any of the contents were false, did you place any reliance on any other factor or any other thing about that by which you concluded that the contents were true—not believing it to be false, and if so, tell the jury what it was.

A. Yes, I did, and it was because the ad was endorsed by a number of people who are well known and whose reputation I had no reason to question.

Q. All right, now, let me ask you if as a routine practice in the exercise of the function of your department which you described as routine on the Advertising Acceptability Department, is it the normal practice and is it routine to have a letter accompanying the editorial type ad where [fol. 1885] persons' names are imprinted on the copy to satisfy yourselves that the names that are imprinted on the copy—that those people have given their assent or permission that their names appear on the ad? Is that the routine way you do it?

A. It is routine to obtain such a letter if there is not one already with the ad.

Q. Oh, well, I didn't mean to imply that it wasn't. Was this with it?

A. That was with it.

Q. Is that the routine way it is done? If there is one with it, is that the routine way by which you assure yourself that the permission of the people has been given for the use of their names?

A. Yes. If there is a letter with the ad, then that is routine.

Q. And it was with this one.

A. Yes. That is correct.

Q. Now, in stating to these people of the jury here that you were led to believe it was true and had no reason to believe that it was false by the fact that it was endorsed by certain persons you considered to be responsible, can you tell the gentlemen of the jury what persons on that caused you to rely on the content of this advertisement as being true?

A. I can.

Q. All right. Will you tell the gentlemen of the jury here the names of some of these people?

A. Raymond Pace Alexander.

Q. All right. Now, who is he?

A. Councilman of the City of Philadelphia.

Q. Were you a resident of the City of Philadelphia at one time?

A. I was, sir, before I came with The New York Times.

Q. Do you mean to say that he was a City Councilman?

A. He wasn't then. To the best of my knowledge he was an attorney in the City at that time and I believe he was elected to the Council after I left the City.

Q. Well, I mean at the time you saw this ad.

A. To the best of my belief, he was a councilman.

[fol. 1886] Q. All right. Anyone else?

A. Mrs. Ralph Bunche.

Q. All right. Who is she?

A. She is the wife of one of the leading figures in the United Nations. I couldn't definitely say what her status was or is and I couldn't say what his status was or is with the U. N. but he is well known.

Q. Anyone else there?

A. Yes, sir. The Rev. Harry Emerson Fosdick.

Q. Who is he or who was he when you read this—

A. He is a widely known clergyman. He was and is.

Q. Where does he reside?

A. In New York.

Q. Is that the Riverside Church—

A. To the best of my belief, I believe so.

Q. Did you believe those persons to be trustworthy individuals at the time you read that?

A. I did.

Q. Did anyone else's name on the ad indicate to you that that person whom you believed to be a trustworthy person or identify this proposition to you and caused you to rely on the truth of it as set forth there—

A. Yes, there were others.

Q. All right. Who else?

A. Clarence Pickett.

Q. All right. Who is he?

A. Executive Director of the American Friends Service Committee.

Q. All right. Anyone else?

A. Mrs. Eleanor Roosevelt.

Q. All right. Anyone else?

A. Norman Thomas.

Q. Let me ask you this. You mean to say that the others you don't consider trustworthy but you didn't know the other people. Is that the idea?

A. That is correct. I picked these out as among those I might know of. I don't know the others.

[fol. 1887] Q. Now, this type of thing and for the purpose of identification we will label it as an editorial type

ad, I will ask you to tell these gentlemen of the jury if that —first of all, this has been identified but so that we will know what we are talking about this is the Advertising Acceptability standards and it is an exhibit in this case by virtue of being attached to the defendant's, The New York Times, Answers to the Plaintiff's Interrogatories and I don't assume that there is any point being made about it not being an exhibit. Now, does the editorial type ad come under the generalized statement of standards on the front cover of this set of standards?

A. Yes, it does.

Q. Now, at the time you read that manuscript when you saw it on your desk, did you have any facts within your knowledge that caused you to think that there was anything misleading or inaccurate or fraudulent recited in it?

A. No, I did not.

Q. I believe you already said that you didn't have anything within your knowledge that caused you to believe it to be false.

A. That is correct.

Q. Did you at that time, in fact, know anything about the facts, that is to say, have any personal knowledge or any knowledge gained from any source about the events or occurrences that purport to be talked about in this ad where it is claimed it happened in Montgomery—have you ever been to Montgomery before since you came down here on this case?

A. No, I have not.

Q. Had you read anything about any of those events that purport to be discussed in there that gave you any knowledge about these statements—about whether these statements were true or false?

A. Not to the best of my recollection.

Q. Or that caused you to believe they were false?

Mr. Nachman: Was his answer, no, he did not know anything about the facts or events?

Mr. Embry: That's right.

[fol. 1888] By Mr. T. Eric Embry: (Continuing)

Q. Did you have any knowledge at the time you read the ad—at the time you read the manuscript of the ad of the

agency which submitted the copy to The New York Times for insertion in the paper?

A. No, I did not.

Q. All right, sir. That's all.

Cross examination.

By Mr. M. R. Nachman, Jr.:

Q. Mr. Redding, you were asked to state who certain people were. Would you mind telling the jury who Norman Thomas is?

A. I would be glad to. Norman Thomas has been a candidate for President on the Socialist party ticket several times.

Q. Now, you gave a list of six people whose names appear on this ad and there are many, many more, are there not?

A. There were and there are.

Q. Possibly as many as a hundred?

A. Sixty-six. I counted them.

Q. How about some of the others? What about the other sixty? Would you rely on their trustworthiness as well?

A. Among those I knew of, I had no reason to doubt their trustworthiness.

Q. Well, let's name some more if you will, please.

A. I can read them from here, I assume.

Q. Yes. Name any others other than the six you already mentioned whose reliability and trustworthiness assured you that this ad was correct.

A. Well, may I say I had no reason to doubt their trustworthiness?

Q. Phrase it anyway you want to. I just want to know who they were.

A. Harry Belafonte. Marlon Brando. Nat King Cole. Rev. Donald Harrington.

Q. Who is he?

A. I think he is a Unitarian minister in New York.

Q. Go ahead.

A. Rabbi Edward Klein. Sidney Poitier. A. Philip Randolph.

[fol. 1889] Q. Who is Sidney Poitier?

A. A movie actor.

Q. Who is A. Philip Randolph?

A. President of the Sleeping Car Porters Union.

Q. Go ahead.

A. That would be all.

Q. Those would conclude the list of persons on whose reliability you yourself relied. Is that correct?

A. I would rather say that I knew nothing that would question their trustworthiness.

Q. Did you consider that those people were sufficiently familiar with the events in Montgomery, Alabama purportedly described in that ad so that you could rely on what was contained in the ad about Montgomery?

Mr. Embry: We object to that, if the Court please.

The Court: I believe that is a good question. Let me give you an exception.

Mr. Embry: All right, Your Honor. We except.

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. You may answer.

A. Will you repeat the question?

Q. Did you consider that these people whose names you have mentioned—would you say that they were sufficiently familiar with events about Montgomery purportedly described in that ad so that you could rely on the ad as being accurate and trustworthy?

A. I couldn't answer that, as to whether I knew they were familiar with the events.

Q. Did you contact any of those persons by phone or in any other way to check the accuracy of the statements in the ad?

A. No, I did not.

Q. You made no effort to test their knowledge of these events as described in the ad. Is that correct?

A. That is correct.

Q. What do you do when you screen an ad, Mr. Redding? [fol. 1890] Supposing you tell us what process you go through.

Mr. Embry: Are you talking about this kind of an ad?

Mr. Nachman: Yes. You are the screener as I understand it, are you not?

The Witness: Yes, sir.

Mr. Nachman: All right. Tell us what you do.

The Witness: I read it.

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Go ahead.

A. I read it and I look into the identification to be sure that if it were published that the sponsorship would be clear to our readers. I would be concerned with accuracy and with possible libel.

Q. Now, how do you go about checking on accuracy? As I understand it, you knew nothing about Montgomery and you knew nothing about the facts or the events purportedly described in it. Is that correct?

A. That's correct.

Q. You didn't check anybody else. Not even the signers, to see if they knew anything about them. Is that correct?

A. That's correct.

Q. You didn't read anything about the events in Montgomery. Is that correct?

A. To the best of my belief, yes.

Q. Now, did you read any stories in The New York Times on February 18th, 1960 about any events in Montgomery before you cleared this ad?

A. I can't answer that as a matter of fact. I try to read most of the stories but I can't recall whether I read anything about this.

Q. How about The New York Times issue of March 2nd, 1960?

A. Same answer.

Q. How about The New York Times issue of March 3rd, 1960?

A. The same answer, sir. I couldn't be sure.

Q. What about March 5th, 1960?

A. I couldn't be sure.

Q. March 6th, 1960?

[fol. 1891] A. Same answer, sir.

Q. What about March 7th, 8th, 9th, 10th, 11th, 12th, 13th, 23rd, 27th and 30th, 1960?

Mr. Embry: March 30th?

Mr. Nachman: I beg your pardon. March 27th, 1960? Leave out March 30th. Same answer?

The Witness: Now, if you don't mind, give me the question again.

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Did you read anything in The New York Times about these matters on those dates and I will repeat them if you want me to.

A. About what?

Q. About any events in Montgomery, Alabama?

A. I cannot say affirmatively whether I did. I am not sure.

Q. Now, Mr. Redding, wouldn't it be a fair statement to say that you really didn't check this ad at all for accuracy?

A. That's a fair statement, yes.

Q. That's a fair statement.

A. Yes.

Q. All right. That's all. No further questions.

Cross examination.

By Lawyer Gray:

Q. Do you remember the name of the gentleman who was in here before you from The New York Times?

A. Yes, of course.

Mr. Embry: Aronson.

By Lawyer Gray: (Continuing)

Q. This ad went to your office after it left his office. Is that correct, sir?

A. That is correct.

Q. He testified that the letter that was written by A. [fol. 1892] Philip Randolph which has been introduced here in evidence as Defendant's Exhibit No. 7 included a list of names attached to it but he further testified that that list of names did not include the name of Rev. Ralph D.

Abernathy, Rev. J. E. Lowery, Rev. S. S. Seay, Sr., and Rev. Fred L. Shuttlesworth. Is that correct?

A. I don't know. I don't know about that.

Q. Did you ever receive this letter? That is, the letter referred to in Defendant's Exhibit No. 7 written to Mr. Aronson which is purportedly signed by A. Philip Randolph?

A. Do you mean the original?

Q. Yes.

A. No. I did not see the original letter.

Q. Did you see the copy?

A. This copy?

Q. Yes. Did that copy get on your desk?

A. Yes.

Q. Was there accompanying that copy a list of names?

A. The names are in there.

Q. Is it your testimony that Defendant's Exhibit 8 is the list of names that accompanied this letter?

Mr. Embry: We object to that. He has already testified what came to him, Your Honor. He has already testified that's what came to him.

Lawyer Gray: He said this came to him. I am asking him specifically whether or not this is the document that is referred to in A. Philip Randolph's letter.

The Witness: To the best of my belief, that is correct.

By Lawyer Gray: (Continuing)

Q. Now, how many times did this ad get on your desk? Isn't it a fact that it came to your desk once and it was sent back and it came back a second time?

A. (No answer from the witness.)

Q. Isn't that a fact.

[fol. 1893] A. Can you clarify your question a little bit?

Q. Didn't the ad come on your desk at one time? It was sent back and when it came back the second time there were some additional names added to it?

A. When you say it came back a second time can you tell me when—

Q. I mean it left your desk and went some place and came to your desk again?

A. I don't recall that.

Q. You don't recall?

A. No.

Q. I will ask you this now. This last group of names and in this last group of names the four individual defendants' names appear. Now, isn't it a fact that their names were added to this list after the ad had originally been sent to The New York Times office?

A. I don't know that to be a fact.

Q. You don't know.

A. If it was so, I don't know it.

Q. Now, this purports to be and this is Defendant's Exhibit A and this purports to be the original copy. Is that right? From which this ad was drawn—

A. A copy of the original.

Q. A copy of the original?

A. Yes.

Q. Are there any differences between the ad as published and this copy?

Mr. Embry: If the Court please, we object to that. The documents speak for themselves.

Lawyer Gray: Well, I am asking him—

The Court: Well, it is Cross Examination. Let him go ahead. I will give you an exception.

Mr. Embry: We except.

The Witness: I am aware of no differences. If there are, I don't know.

[fol. 1894] By Lawyer Gray: (Continuing)

Q. Now, I call your attention to the next to last page of Defendant's Exhibit No. 8 and I would like you to look at that and to particularly look at the area that separates the names up at the top from the names on the bottom. Please look at that.

A. Yes.

Q. Have you had a chance to look at it?

A. Yes.

Q. Now, I would like you to look at the ad identified as Plaintiff's Exhibit No. 347 and look at the material which

separates the top names from the bottom names and tell this Court and this jury whether there is any difference.

A. Do you mean the difference between this section and this section?

Q. No. I mean the difference between the names appearing at the top and the names appearing at the bottom.

A. I am sorry. I don't know.

Q. Read to the jury what is on the ad exactly. What appears between the two sets of names? What separates them? Read it.

A. It says, "We in the south who are struggling daily for dignity and freedom warmly endorse this appeal."

Q. Now, is there anything else that separates the two groups of names?

A. Not within my understanding of your meaning. No.

Q. Now, refer to the copy of the original manuscript and read to the Court and the jury what appears there.

A. Do you mean right here?

Q. Yes, sir.

A. It says, "We who are struggling daily for dignity and freedom in the south."

Q. Now, isn't there something else separating those two lists of names?

Mr. Embry: Your Honor, we object to that. These documents speak for themselves.

Lawyer Gray: Your Honor, we have been reading these documents all day—

The Witness: I left out, "warmly endorse this appeal."

[fol. 1895] By Lawyer Gray: (Continuing)

Q. Look at it again. Look at it again and see if there isn't something else that separates the two lists of names.

A. Yes. "Additional signers from the South."

Q. Now, will you read to the jury and point out to the Court and jury what the difference is between this ad and the names as they appear on the original manuscript.

Mr. Embry: We object to that, if the Court please. That's for the jury to say if there is—

The Court: Well, let him point it out if he can.

The Witness: You mean this part—

Lawyer Gray: What is the difference between—what separates the two groups of names? That's what I am trying to find out. That's all I want to know.

The Court: Are you referring him to the thermo-fax copy?

Lawyer Gray: I am referring him to the thermo-fax copy as compared to the ad as published, Your Honor.

The Witness: Where it says "Additional signers from the South" in parenthesis.

By Lawyer Gray: (Continuing)

Q. Now, that is on the thermo-fax copy.

A. That is correct.

Q. That does not appear on the draft as published, does it?

A. It does not.

Q. Now, isn't it a fact that the names which follow that statement were added to it—were added to that list after A Philip Randolph had written his letter to The Times assuring the Times that the signers of that ad had given their consent?

A. I don't know that to be a fact.

Q. You don't know.

A. No, I do not.

Q. What would be your opinion in view of the fact that it says "Additional signers from the South?"

[fol. 1896] Mr. Embry: We object to that, Your Honor.

The Court: Yes, he will have to tell the facts as he knows them.

By Lawyer Gray: (Continuing)

Q. Now, Mr. Redding, will you tell me whether or not on the thermo-fax copy of the ad was the four named defendants. Were their names signed to the ad or were they typed on the ad?

A. If I understand you correctly, these are the names you are referring to.

Q. Yes, sir.

A. Typed on the original or whatever this was taken from.

Q. That's correct. Then, these defendants along with the others—their names were typed on this ad or typed on the original copy and—

Mr. Beddow: He answered this question once and it speaks for itself, Your Honor. He is just wasting time and we have been talking about getting along but he is wasting a lot of time here and—

Lawyer Gray: Your Honor—

The Court: I think it has evidential value. Let me let it in. Go ahead.

The Witness: Well, I think it is the same question as before and I will say yes again.

By Lawyer Gray: (Continuing)

Q. Now, will you tell the Court whether you or anyone from the Times—you as screener for The New York Times—did you contact the Rev. Ralph D. Abernathy to ascertain whether or not he gave his consent for his name to be on this ad?

A. No, I did not.

Q. Did you, in your official capacity, contact the Rev. S. S. Seay, Sr. to determine whether or not he gave his assent for his name to be affixed to this ad?

A. No, I did not.

Q. I ask you the same question with reference to the [fol. 1897] Rev. Fred L. Shuttlesworth?

A. I did not. No. I did not contact him.

Q. I ask you the same question with reference to Rev. J. E. Lowery?

A. I did not.

Q. Now, one other question in order to be sure I understand your testimony, sir. Now, is it your testimony that there was only one format to this ad and that one format included all of the names that appeared on the ad as published?

A. When you say, format—tell me what you mean by that.

Q. Well, I am merely using the terms as used by other witnesses here. Whatever type of copy is made up by your company prior to the time of publication so you can check over it and so that it can go back to the person who has

ordered the advertisement so that he can see it. You are saying there was only one format and that format included all of the names on this ad as published.

A. To the best of my recollection—yes, as published, that's right.

Q. Now, if that is not a fact, who in your organization would know what the facts are?

A. I couldn't be sure about that.

Q. That's all.

Redirect examination.

By Mr. T. Eric Embry:

Q. One other question, sir. You are familiar with the fact that this process that is called thermo-fax will not photograph a pen and ink signature on paper, are you not?

A. I understand that to be a fact, yes.

Q. All right. That's all.

Recross examination.

By Lawyer Gray:

Q. One further question, sir. Were the names signed to the original? Were these four defendants' names signed to the original?

A. I didn't see the original.

[fol. 1898] Q. That's all.

Redirect examination.

By Mr. T. Eric Embry:

Q. In the light of your previous testimony wherein you told these gentlemen of the jury of your reliance on the first six named persons as being truthful and trustworthy persons—in light of that fact, you did not think it necessary to make any further check in respect to the content of the ad. Is that correct?

A. That is correct.

Q. All right. That's all.

Mr. Nachman: No further questions.

HARDING BANCROFT, having been duly sworn, was called as a witness for the Defendants and testified as follows:

Direct examination.

By Mr. T. Eric Embry:

Q. Is this Mr. Harding Bancroft?

A. Yes, sir.

Q. Where do you live, Mr. Bancroft?

A. In New York City.

Q. Did you live there in March of 1960?

A. Yes, sir.

Q. Are you connected with The New York Times Company?

A. Yes, sir.

Q. In what capacity?

A. I am Secretary of the Times.

Q. You are one of the officers of the corporation.

A. Yes, sir.

Q. And you were, I believe, on March 29th, 1960.

A. Yes, sir.

[fol. 1899] Q. You have not been under the Rule and you heard the testimony in this case and to shorten my questioning, I will ask you if you knew anything about—you as the Secretary of the corporation—knew anything about this ad before it was published?

A. No.

Q. Did you see the ad before it was published?

A. I did not.

Q. Do you recall whether you saw it since?

A. Yes.

Q. Did you hear any discussion of the ad in The Times or within The Times before it was published?

A. No.

Q. As a matter of fact, let me get this straight, did you see the ad after it was published before the litigation was instituted?

A. I saw the ad—I remember reading the ad after we heard there was going to be litigation but before it was actually instituted.

Q. Now, as Secretary of the corporation, was your attention directed to a letter received by the corporation over the signature of Mr. L. B. Sullivan, the Plaintiff in this case?

A. Yes.

Q. Now, I only have a copy here and I do not have the original but I show you this copy which is identified as Defendant's Exhibit C to the Defendant New York Times Answers to the Plaintiff's Interrogatories in this case which has already been introduced into evidence.

A. Yes, that was brought to my attention.

Q. After the receipt of this letter by the corporation, did you direct the general counsel of the corporation, Mr. Loeb, to reply to that letter along the lines that the letter itself in Exhibit No. 363 indicates?

A. Yes, we did.

Q. Now, within the same period of time was a letter directed to the company by the Governor of Alabama?

A. Yes, within the same period of time but a little bit later.

Q. A little bit later?

A. Yes.

[fol. 1900] Q. Now, it has already been testified about and I am going to shorten it by—you heard read the content of the reply which is Exhibit E of our Answers to the Plaintiff's Interrogatories and I will ask you was there also a letter that was sent along with that Exhibit E?

A. Yes, there was a letter sent from the President of The Times addressed to Governor Patterson.

Q. Was that letter signed by Mr. Orvil Dryfoos?

A. Yes.

Mr. Embry: We offer this letter into evidence, if the Court please.

Mr. Nachman: No objections.

Lawyer Crawford: May I see it?

Mr. Embry: Certainly, yes. Here it is.

(Letter from New York Times signed by Orvil Dryfoos, to Governor Patterson, Montgomery, Alabama, dated May 16th, 1960, offered and received in evidence and identified as Defendant's Exhibit No. 9.)

Mr. Embry: If the Court please, for the information of the jury and for clarification I would like to read this letter which has been identified as Defendant's Exhibit No. 9.

The Court: Go ahead.

Mr. Embry: The letter is dated May 16, 1960 and it is addressed as follows: "Dear Governor Patterson: In response to your letter of May 9th, we are enclosing herewith a page of today's New York Times which contains the retraction and apology you requested. As stated in the retraction, to the extent that anyone could fairly conclude from the advertisement that any charge was made against you, The New York Times apologizes. Faithfully yours, Orvil Dryfoos." A copy was sent to Mr. Loeb and a copy was sent to Mr. Sulzberger's office.

[fol. 1901] By Mr. T. Eric Embry: (Continuing)

Q. Now, I will call your attention to another exhibit. Now, I direct your attention and ask you if at the time you initiated the letter to be sent to Governor Patterson had you after this matter came up and the litigation had been threatened, had you read this statement contained in the ad that "When the entire student body protested to state authorities by refusing to re-register, their dining hall was padlocked in an attempt to starve them into submission."

A. Yes.

Q. You had read it.

A. Yes.

Q. What was the occasion, please, sir, for your initiating the letter directed to Governor Patterson enclosing the apology that you had printed in that issue of The New York Times?

A. Well, what we had done was, as is shown in the Answers to the Interrogatories, we asked our stringer down in this area—

Q. What is a stringer by the way? Do you know what a stringer is?

A. I know the general definition of the term, yes.

Q. All right. Tell us what it is.

A. It is a newspaper term. It means a man who is not on the payroll of The Times, not an employee of The Times in any legal sense but is asked by The Times to—or any other newspaper—to prepare material on a given instance in the area where he lives and write a story about it and he gets paid by the line or by the word and not by the week as normal reporters and correspondents do.

Q. Now, I interrupted you while you were giving your last answer and you might want the Court Reporter to pick you up as it were, and I will ask him to read you the question back to the time where I interrupted you—

A. Well, I can remember it roughly.

Q. Can you?

A. Yes. We asked our stringer down here, a man by name of McKee, to act as our correspondent to cover some statements—we asked our stringer down here, McKee, and [fol. 1902] we asked our correspondent who covers some states in this general area to look into the matter or matters which were referred to inthe ad that was published. We got replies from them, one by telegram and one by telephone which was recorded and typed so that a complete transcript of the telephone conversation was there and those two things are referred to in the Answers to the Interrogatories which are now in evidence as I understand it.

Q. Well, now, let me refer to that if you have our copy of it before you. Are you speaking now of our Exhibit A to the supplemental answers?

A. Yes. That's right.

Q. And which has a bunch of hieroglyphics up at the top that doesn't mean anything to me although it may mean something to the telegraph people and it is dated Montgomery, Alabama, April 14th. That is the one that is purported to have been sent and was sent by this Don McKee?

A. That's right.

Q. Now, let me get some events in chronological order here. When did we receive the letter from Commissioner Sullivan? That is an exhibit too.

A. It was April 8th, I believe. March the 8th.

Q. March 8th?

A. It must be April 8th. It is dated March 8th and then it must be April 8th but the ad didn't appear until March 29th. This is dated April 14th and the letter is dated March 8th which would make it appear it was written before the ad was published and I am sure it wasn't. It refers in the first paragraph to an ad published on March 29th.

Mr. Embry: Can we stipulate it was written after the ad was published?

Mr. Nachman: Yes.

By Mr. T. Eric Embry: (Continuing)

Q. And this was supposed to have been written about April 14th and you got the letter on the 8th and six days later you got the telegram from Mr. McKee.

[fol. 1903] A. I am not sure we got the letter on the 8th. The letter was dated on the 8th and it was probably two or three days before it got to New York.

Q. Then, the one from Sitton was on May 5th.

A. That's right.

Q. And the McKee telegram refers to this padlocking—the state authority thing, doesn't it?

A. Yes.

Q. Then the other—generally speaking, the other matters that are complained of here is referred to in the Sitton telegram of May 5th. Isn't that correct?

A. That is correct. The Sitton telegram gave us a complete chronology of events down here.

Q. Which McKee's did not.

A. That's right. The McKee telegram did not.

Q. Now, what was the occasion of your sending the letter to the Governor and not to Commissioner Sullivan?

A. Well, the Governor wrote us a letter asking us for a retraction and we replied in what was, in effect, a retraction and apology and the reason we did that because we didn't want anything that was published by The Times to be a reflection on the State of Alabama and the Governor was, as far as we could see, the embodiment of the State of Alabama and the proper representative of the

State and, furthermore, we had by that time learned more of the actual facts which the ad purported to recite and, finally, the ad did refer to the action of the State authorities and the Board of Education presumably of which the Governor is the ex-officio chairman, we understand, and, therefore, we thought it was appropriate to send to the Governor the letter which Mr. Dryfoos sent enclosing a copy of the retraction which was printed in The Times itself.

Q. I believe that there was a specific reference to State authorities.

A. The words, state authorities, I believe, were in the ad itself.

Q. Well, that's correct. That's what I meant. After this matter all came up and you read this ad, did you consider that any of the language in there referred to Mr. Sullivan? [fol. 1904] A. No. I think that was the reason why we asked our general counsel to write in the terms that he did to Commissioner Sullivan pointing out to him that we didn't see how the ad reflected on him in any way or how he could be identified by the ad and saying that we were puzzled by his attitude on that and pointing out that we were looking into the matter further which we did do by getting a letter from our correspondent down here, Claude Sitton, and finally suggesting to the Commissioner that he might want to reply to us indicating how in fact he was involved in the text of the ad.

Q. I believe the evidence so far is and I will ask you if this is correct—that you did not receive any reply from Commissioner Sullivan to that letter.

A. No. The letter that I have right here said, "In the meantime, you might if you desire let us know in what respect you claim that the statements in the advertisement reflect on you," and we had no response to that suggestion.

Q. All right, Mr. Bancroft. That's all and thank you.

Cross examination.

By Mr. M. R. Nachman, Jr.:

Q. Mr. Bancroft, am I correct in understanding your testimony to be that you did think that this ad referred to

the Governor and the State authorities and that's one of the three or four reasons why you retracted for the Governor and not for the Plaintiff in this case?

A. No. What I said or attempted to say if I didn't mix up my words in saying it, the ad did, as I remember it, refer to the State authorities and, therefore, inasmuch as the Governor is the embodiment of the State authorities, we printed the retraction in The Times and wrote the letter to him enclosing it, the letter from Orvil Dryfoos.

Q. And you felt that the ad did not refer to the City of Montgomery and to the Plaintiff in this case and for that reason you did not retract in response to a demand from the Plaintiff in this case. Is that correct, sir?

A. Yes, I think that is correct.

[fol. 1905] Q. Now, you, as I understand it, signed the Interrogatories which are in evidence for The New York Times Company, did you not?

A. Yes, sir.

Q. I call your attention to Answer No. 11. Do you have them there with you?

A. Yes, sir.

Q. I call your attention to the second full sentence on page 4 in the Answer to the Interrogatory No. 11. Have you found that?

A. Yes. It says, "It did so—"

Q. That's right.. "It did so although in its judgment no statement in said advertisement referred to John Patterson either personally nor as Governor of the State of Alabama nor referred to this Plaintiff or any of the Plaintiffs in the companion suits," Now, will you explain to the jury if there is any difference between that Answer in the Interrogatories and the answer which you have just given to them? Does it mean the same thing?

A. I don't think there is any difference. The answer on the witness stand was that I referred to the fact that state authorities were referred to in the ad.

Q. Is there anything in that sentence that says that?

A. In the sentence that says what?

Q. In the sentence that I just read you that differentiates in any way the position of Patterson as the Plaintiff in his suit and Mr. Sullivan as the Plaintiff in this suit?

Mr. Embry: We object to that, Your Honor.

The Court: Well, it is Cross Examination. I will give you an exception.

Mr. Embry: We except.

The Witness: Your question is, is there any difference—

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Is there anything contained in this sentence in the Interrogatories that I just read to you which differentiates in any manner the position of Governor Patterson in his suit with Commissioner Sullivan in the present suit?

[fol. 1906] A. As I read the thing, the answer is no.

Q. They are put on a par, aren't they, Governor Patterson and this Plaintiff?

A. Yes.

Q. But there was a retraction for Governor Patterson and there was no retraction for this Plaintiff. That is correct, isn't it?

A. That is correct.

Q. You were present in Court throughout Mr. Redding's testimony, were you not, sir?

A. Yes, sir.

Q. Do you have any disposition at this time to correct or amplify or change any testimony that Mr. Redding gave by way of disagreement?

Mr. Beddow: We object to that question, Your Honor, please. He is asking this witness to interpret testimony and to take over the function of the jury—

The Court: I believe you will have to be more specific such as by referring to one specific question but as a general question, I don't believe the question is good and I sustain the objection.

Mr. Beddow: It is a multiple question, Your Honor.

Mr. Nachman: All right, sir. I will be more specific then.

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Do you disagree with the testimony that Mr. Redding gave regarding the fact that no check was made on the statements contained in this ad before they were published by The New York Times?

Mr. Beddow: We object to that question on the grounds that it calls for irrelevant, illegal, incompetent and immaterial testimony and it is argumentative, if it please the Court, and he is asking this witness—

The Court: I don't know whether I am especially impressed with the use of the word "disagree".

Mr. Nachman: Is there anything incorrect about that [fol. 1907] testimony?

Mr. Beddow: Now, we object to that, Your Honor.

The Court: I believe all he can do is testify to what he knows. I doubt if he could answer that question. I will sustain the objection to it.

Mr. Nachman: May I test his knowledge a little bit, Your Honor, as to what he knows—

The Court: Yes. Go ahead.

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. As Secretary of the corporation, The New York Times Company, did you make a determination in the course of your duties as such officer as to whether or not any check had been made by Mr. Redding in his advertising acceptability department into the accuracy of this ad prior to its publication?

A. Did I make a check—

Q. Did you make that determination as to what kind of a check, if any, Mr. Redding's department had made into the statements contained in the ad—

A. When did I—

Q. At any time.

A. Yes. We did. After the ad was published and we knew that litigation—or we had learned through an AP story in the paper that litigation was going to be brought against The Times. We then did have a check made as to what we had learned about the ad before it was published,

Q. But no check was made into the statements contained in the ad prior to its publication. Is that correct?

Mr. Beddow: Now, Your Honor, we object to that question. It is uncertain and indefinite as to person and time. He can ask him whether he made any check into it or whether or not—

The Court: Well, he asked him if it was within his knowledge—

Mr. Nachman: Within his knowledge as Secretary of the corporation. He is the man who sat here throughout the trial—

[fol. 1908] The Court: I will let it in and give you an exception.

Mr. Beddow: We except.

Mr. Nachman: You may answer, sir.

The Witness: I believe that no check was made, sir.

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Now, Mr. Bancroft, refer, if you will, sir, to the letter sent by Lord, Day and Lord to the Plaintiff which is Exhibit D to the Interrogatories. Do you have the original?

A. Yes.

Q. Is it now the position of The New York Times that with the exception of the statement that "the dining hall was padlocked in an attempt to starve them into submission" that the other statements in the ad that we complained about in this Complaint are "substantially correct" to use the phrase in this letter?

Mr. Beddow: We object to that question, if the Court please. He is asking him what his position is now—

The Court: I will let it in and give you an exception.

Mr. Embry: It invades the province of the jury, Your Honor. It is argumentative—

The Court: Well, the letter is in evidence and I think he can state his position.

Mr. Embry: We except, Your Honor.

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. You are authorized to speak for The New York Times in this law suit, are you not, sir, as its Secretary?

A. I suppose so.

Q. You may answer that question then.

A. I think it is a pretty hard question to answer, Mr. Nachman. What The Times believes is a pretty hard thing to define but—

Q. What they contend in this law suit.

Mr. Embry: We object to that. Whether it is true or not—

Mr. Nachman: That is a simple and plain question—

[fol. 1909] The Court: I think it is admissible on Cross Examination.

Mr. Embry: We except.

Mr. Nachman: You may answer.

The Witness: All I am trying to say is what The Times knows about the facts in the ad are all set forth—it doesn't know anything more than what is set forth in these two responses which our stringer and correspondent there, which are annexed to the Answers to the Interrogatories and we don't have any additional knowledge to that.

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Now, referring to Exhibit C in the letter demanding a retraction, there are two paragraphs in the ad which are quoted and it is stated in the letter that those are false and defamatory. Then, referring to Exhibit D your attorneys wrote back and they said that the statements following their investigation—that the statements "are substantially correct with the sole exception that we find no justification for the statement that the dining hall of the State College was padlocked in an attempt to starve them into submission." Now, what I want to know, sir, is simply this. Is it still the position of The New York Times that with that one exception that the statements are "substantially correct"—

Mr. Embry: Now, we object to that, Your Honor. It is not a question of what his opinion of the position of the Times is now. Those events are dated by the pleadings that framed the issues in this case and it is not the function of this witness to argue the case or to draw conclusions as to what—

The Court: I think the question comes within the pleadings. I will give you an exception. Go ahead.

Mr. Embry: We except, if the Court please.

The Court: He may answer it if he can.

The Witness: I really think I have to answer the question by saying I don't know. As I tried to say earlier, all

the information The Times has about the incidents referred to in the ad are contained in these two annexed to the [fol. 1910] Answers to the Interrogatories. I don't have any further information myself and so I don't know whether the words "substantially correct" are an accurate definition or not.

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Then, you would change it to that extent that you are now uncertain as to whether it is substantially correct. Is that your testimony?

Mr. Embry: We object to that, Your Honor.

The Court: Well, it is Cross Examination and under our statute you have to—

Mr. Embry: Your Honor, the undisputed testimony will show that the only information The Times had in its possession at the time he is talking about when Mr. Bancroft was concerned with framing the reply to Mr. Sullivan's letter was a telegram from McKee and the jury will have that telegram before them and it is the province of the jury to pass upon whether based on that as cited in that telegram everything was substantially correct as far as The Times knew except that statement as referred to in that letter.

The Court: I will allow the question.

Mr. Embry: We except.

Mr. Nachman: You may answer.

The Witness: I have lost track of the question, sir.

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. The question was, that there has been a change in the position of The Times since April 15th, 1960, namely, that at that time they said these other statements were "substantially correct" and now you say on behalf of The Times that The Times is uncertain whether those statements are substantially correct.

Mr. Embry: We object to that—

The Court: Same ruling.

Mr. Embry: We except—

Mr. Nachman: Is that a fair summary of your testimony on this point?

The Witness: Well, it is awfully difficult to define what [fol. 1911] The Times thinks. This letter is signed by Lord, Day and Lord, our general counsel, and they said that after their investigation it would seem to indicate that the statements were substantially correct.

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. What does The New York Times say? They are one of the defendants in this case. Does the Times say it is substantially correct or not?

Mr. Embry: Your Honor, we object to that. This is not within the pleadings in this case—

The Court: What was the question?

Mr. Nachman: Your Honor, we are calling on the man here who is here who is here as spokesman for this defendant corporation. We are asking him to state to this Court and to this jury here and now whether they say these statements are true or whether they say these statements are false. This is a libel suit and we say they are false. Now, if the defendant, The New York Times, wants to admit that they are false, then we will not ask any more questions about it and Mr. Embry keeps saying, it is not an issue, it is not an issue, but if he wants to admit that the statements are false—

Mr. Embry: Your Honor, I am going to ask that you restrict the attorney from making a jury argument as he has been doing here throughout the course of this trial. Now, I have tried to restrain my temper but it is so obviously improper, Your Honor, that it violates—

Mr. Nachman: Your Honor, I am trying to—

Mr. Embry: Just a minute, sir.

Mr. Nachman: I beg your pardon. Go ahead.

Mr. Embry: Now, Your Honor knows and, of course, Mr. Nachman knows that that is an improper question. Those are things that the jurors decide from all of the facts that are before them and not from the opinions of any—

The Court: Well, he is the Secretary of the corporation and I think the question is good. Let me give you an exception.

Mr. Embry: We except.

The Witness: I am afraid I am going to have to ask the [fol. 1912] Reporter to read the question to me again. I know the general drift of it.

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. The question is whether The New York Times says that these matters with the exception of the padlocking statement—does The Times say that they are true or does The Times say that they are false?

Mr. Embry: We object to that, Your Honor.

The Court: I will let it in and give you an exception.

Mr. Embry: We except.

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. The statements set out in the letter demanding a retraction and the statements contained in the Complaint in this cause.

A. I agree that I am the Secretary of the corporation but I find it terribly difficult to be able to say that The Times, as such, believes something is true or is not true. Now, all I can tell you is what the sources of The Times' knowledge are and the sources are The Times' knowledge—the complete sources as far as I know, are the two annexes attached to the Answers to the Interrogatories. Now, if you asked me would I use the words "substantially correct", now, I think I probably would, yes. The tenor of the content, the material of these two paragraphs in the ad which have been frequently read here are not substantially incorrect. They are substantially correct. Now, what sort of words I can use to give you an answer that would satisfy you, I don't know.

Q. I think that answered the question, sir. Am I correct in stating, sir, that throughout the month of March, or at least throughout this year, from January 1st to the present, that Claude Sitton has been a regular employee of The New York Times?

A. Yes. He is a regular employee.

Q. And his base, so to speak, is in Atlanta, Georgia?

A. Yes, I think he has an office in Atlanta. He moves generally about the area down south here.

Q. And that area includes the State of Alabama, does it not?

[fol. 1913] A. I believe so but that's pretty much out of my province.

Q. All right, sir. That's all.

Cross examination.

By Lawyer Gray:

Q. I have just a few questions, Mr. Bancroft. You heard the two employees of The Times who have testified to the fact that the four individual defendants of this suit—that their names were not signed to this ad but they were typed. Is that your testimony too?

A. Well, I don't have any basis for that testimony except to say that I heard them testify to that effect. I did not see the manuscript of the ad that was admitted into evidence.

Q. You also heard them testify that they made no effort to ascertain from these four defendants whether they had given their consent for affixing their names to this ad.

A. Yes, I heard that testimony.

Q. And that's true?

A. So far as I know it is true, yes.

Q. That's all, sir.

Redirect examination.

By Mr. T. Eric Embry:

Q. Mr. Bancroft, did you, when you were concerned with the matter the time that the—did you consider at the time—do you now consider that the—from a reading of the language contained in it—that the language contained in the portions of the advertisement complained of, did not refer to any individual and so state that position in your reply to the Governor and to Commissioner Sullivan?

A. Yes, sir.

Q. Am I correct, in your understanding that even though you felt that way and your general counsel felt that way, that because of your consideration that the Governor of Alabama was the embodiment of Alabama that an apology would be made to him even though you didn't conclude that it referred to him?

[fol. 1914] A. That's correct.

Q. All right, sir. That's all.

Mr. Embry: Your Honor, we have a stipulation we want to put in the Record. We made inquiry into the number of persons that composed the Police Department of the City of Montgomery and opposing counsel has passed me a note and we will stipulate for the Record that the Police Department of the City of Montgomery consists of 175 regularly full time employed policemen divided into three shifts and four divisions and there's something about these special traffic directors or ladies who handle traffic at the schools and that there are twenty-four of them and I suppose you would call them "lady looker-afterer-of-school children," I suppose.

The Court: All right. Are there any more witnesses?

Mr. Embry: We rest, if the Court please.

The Court: All right. We will proceed with the other defendants.

Lawyer Gray: If the Court please, we will consolidate the defense of all four defendants. Our first witness will be the Rev. S. S. Seay, Sr.

The Court: All right. Proceed.

Solomon S. Seay, Sr., having been duly sworn, was called as a witness in his own behalf and testified as follows:

Direct examination.

By Lawyer Gray:

Q. State your name, please.

A. Solomon S. Seay, Sr.

Q. Are you a resident of the State of Alabama?

A. Route 3, Box 400-D, Montgomery, Alabama.

Q. Tell us whether or not you are a minister, sir?

A. Yes, I am a minister.

[fol. 1915] Q. What church?

A. The M. E. Zion Church.

Q. How long have you been a resident of the State of Alabama, sir?

A. Well, I have been in and out of Alabama—I was born here and I guess I have spent forty years in Alabama.

Q. Now, I show you this ad identified as Plaintiff's Exhibit No. 347 and I ask you to look at that ad. Look at the whole ad. Now, tell the Court and jury whether or not your name appears on that ad?

A. Yes, sir. It does.

Q. In what location on the ad does your name appear? At what point on the ad?

A. It appears in the third column to the right under the heading "We in the South who are Struggling Daily for Dignity and Freedom Warmly Endorse this Appeal."

Q. Tell the Court and the jury whether or not you published that ad in The New York Times.

A. I did not.

Q. Did you pay the New York Times or anybody else to publish that ad?

A. I did not.

Q. Tell the Court and the jury whether or not you caused that ad to be published in The New York Times.

A. I did not.

Q. Did you authorize anyone to use your name and affix your name to that ad which appeared in The New York Times?

A. I did not.

Q. Did you authorize anyone to use your name in the furtherance of the work of the "Committee To Defend Martin Luther King and The Struggle For Freedom in the South".

A. I did not.

Q. Did you have any knowledge prior to the time that ad was published that that ad was going to come out?

A. I did not.

Q. Did you know prior to the time of the publication of that ad that your name would be affixed to that ad?

A. I did not.

[fol. 1916] Q. As best you can recall, tell the Court and jury when the first time it was that you saw a copy of that ad.

A. I saw a copy of this ad—not the actual copy of the ad—I saw an account of it in the Complaints that were sent to me.

Q. Now, did the Complaint that you received have a copy of the ad attached to it?

A. No, it did not.

Q. Your Complaint did not have a copy of the ad attached to it.

A. No. It did not.

Q. Well, in the Complaint you mean that there were some paragraphs in the Complaint that referred to that article?

A. Yes.

Q. But at that time you still had not seen a copy of the article.

A. No.

Q. As best you can recall, how long after the suit had been started was it before you found a copy of that ad?

A. Well, I am afraid to say.

Q. Well, just give us your best judgment about it. Do you have any idea about how long it was?

A. You mean the ad as it is here?

Q. A copy of that ad.

A. No. I really have never seen nor read a copy of the ad as it is here.

Q. Did you receive a letter from Commissioner Sullivan requesting that you retract that ad?

A. Yes, I did.

Q. Did you reply to that letter?

A. No, I did not.

Q. Tell the jury and the Court why you did not reply to it.

A. Well, in the first place, I was so amazed about the Complaint and about the ad until I was afraid to make any reply to it until I had had some legal advice on it for fear that I might incriminate myself. I had no knowledge of it whatsoever.

Q. Now, prior to that time, did you have any knowledge [fol. 1917] at all that this ad would be published?

A. No, none whatsoever.

Q. Did you have any control or any method by which you could compel The New York Times to retract that ad?

A. No.

Q. Do you have any control over The New York Times at all as to what it publishes in its newspaper?

A. None at all.

Q. Prior to the date of the publication of this ad, did any representative of The New York Times contact you to ascertain whether or not you had given your consent to the use of your name in this ad?

A. No.

Q. All right, sir. That's all.

Cross examination.

By Mr. M. R. Nachman, Jr.:

Q. I take it, that A. Philip Randolph was incorrect then when he said that he had permission to use your name in furthering the work of this committee referring to exhibit B of the Interrogatories. You heard the testimony about that.

A. Emphatically so. Emphatically so, sir.

Q. He is wrong about that.

A. That's right.

Q. Have you ever communicated with him since these matters have come up since you got the letter demanding a retraction and since you got the summons in this law suit? Have you ever communicated with him and told him that he was wrong?

A. You are speaking of Randolph?

Q. Yes.

A. I have not.

Lawyer Seay: Your Honor, I think the evidence in this case thus far points to the fact that the bottom list of names that appear on this ad did not originally accompany the letter—they did not originally appear on the list that was accompanied by the letter of A. Philip Randolph and I think counsel is assuming that as a fact and as being an [fol. 1918] issue here—

The Court: I think the question is proper and I will give you an exception to the Court's ruling.

Lawyer Seay: We except.

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Have you ever written to The New York Times or communicated with The New York Times in any way and asked them to retract this ad?

A. No, I have not.

Q. Have you ever written any letter for publication in The New York Times stating that you had nothing to do with this ad and that you disavowed it?

A. No, I have not.

Q. As I understand it, and as I understand your testimony, you did receive a letter from Commissioner Sullivan asking for a retraction, did you not?

A. Yes, I did.

Q. You did not answer it?

A. No, I did not.

Q. Now, I would like you to look at the third paragraph on the left hand side there on the ad and read that. Read that section where it says "IN Montgomery, Alabama, after students sang—"

A. You mean—

Q. Well, that's all right. We will not go into that now. That's all.

Redirect examination.

By Lawyer Gray:

Q. Just one more question. Did you know prior to the hearing at this trial that A. Philip Randolph had written such a letter to The New York Times?

A. No.

Q. What was your answer? I didn't hear you.

A. No.

Q. When was the first time you found that out?

[fol. 1919] A. During this Court proceeding.

Q. During this Court proceeding.

A. That's right.

Q. All right. That's all.

RALPH DAVID ABERNATHY, having been duly sworn, was called as a witness in his own behalf and testified as follows:

Direct examination.

By Lawyer Gray:

Q. State your name, sir.
A. Rev. Ralph D. Abernathy.
Q. What is your occupation, sir?
A. I am a minister of the gospel.
Q. Where is your residence?
A. Here in the City of Montgomery.
Q. How long have you so resided?
A. I have been here for about eight years.
Q. Now, I show you Plaintiff's Exhibit No. 347 and ask you to look at that.
A. Yes, sir.
Q. Now, tell the Court and jury whether or not your name appears on that ad?
A. Yes, my name does appear.
Q. Tell the Court and jury whether or not you published that ad.
A. No, I did not.
Q. Did you cause the ad to be published in The New York Times?
A. No, I did not.
Q. Did you authorize anyone to use your name on this ad?
A. No, I did not.
Q. Did you authorize anyone to use your name in the furtherance of the work of the "Committee to Defend Martin Luther King and the Struggle for Freedom in the [fol. 1920] South."
A. No, I did not.
Q. Did you pay to The New York Times any amount of money to have them publish that ad?
A. No. I never paid any money to The New York Times for anything.
Q. Did you have any prior knowledge that this ad would appear in The New York Times and that your name would be affixed to it?
A. No, I did not.

Q. As a matter of fact, were you in the country when this ad came out?

A. Let me see. This was published March 29th. Yes, I believe I was in the country when it was—when it came out. However, I did not know that it was out.

Q. You did not know it was out.

A. No, sir.

Q. Did you authorize anyone to use your name in connection with that ad?

A. No, I did not.

Q. Did you request The New York Times to run this ad in the March 29th issue of The New York Times?

A. No, I have never sent anything to The New York Times to be published.

Q. Prior to the publication of the ad had any representative of The New York Times contacted you to ascertain whether or not you had given your consent for the use of your name on the ad?

A. No.

Q. Did you receive a letter from Commissioner Sullivan requesting that you retract that ad?

A. Yes, sir. I received a letter.

Q. Did you make such retraction?

A. No, I did not.

Q. Tell the Court and jury why you did not make such a retraction.

A. Well, I didn't make a retraction, number one, because I did not publish the ad and I felt that I was being asked to retract something that I did not put forth.

Q. Could you compel the paper, the New York Times, to retract the ad?

[fol. 1921] A. No, I could not.

Q. When was the first time you saw the ad?

A. Well, I saw the ad—a photostatic copy of it—when the papers were served on me and I believe that was somewhere about the latter part of April.

Q. Did you tell A. Philip Randolph that he could use your name in connection with this ad?

A. No, I did not.

Q. You have heard a reference made to the letter written

by him and as far as you are concerned, is that letter applicable to you?

A. Certainly not.

Q. You did not give him your consent for your name to appear in this ad.

A. No, I did not.

Q. All right, sir. That's all.

Mr. Embry: No questions.

Cross examination.

By Mr. M. R. Nachman, Jr.:

Q. Did you give A. Philip Randolph your consent and permission to use your name in furthering the work of the "Committee to Defend Martin Luther King and the Struggle for Freedom in the South?"

A. No, I did not.

Q. I see. He is wrong about that when he said you did. Is that your testimony?

A. Yes.

Q. Are you acquainted with him?

A. Yes. I know him.

Q. Is he a good friend of yours?

A. No, he is not a good friend of mine but I know him.

Q. Do you see him frequently?

A. No, I don't see him frequently.

Q. Have you seen him and communicated with him since this ad came out and you were aware of it?

[fol. 1922] A. No, I have not seen him since this ad was published.

Q. How about communicating with him? Have you communicated with him?

A. No, I have not communicated with him.

Q. You did not answer Commissioner Sullivan's letter, did you?

A. No, I did not answer it.

Q. You didn't communicate with him in any way and tell him that you had nothing to do with the publication of this ad.

A. No. I did not.

Q. Did you communicate with The New York Times in any way and tell The New York Times that you had nothing to do with the publication of this ad?

A. No, I did not.

Q. Did you write a letter to The New York Times and request that it be published disavowing any connection with this ad?

A. No, I did not.

Q. Did you take any steps whatsoever to disavow this ad and to disconnect yourself with it?

A. Yes, I did.

Q. What did you do?

A. Well, I called this Committee to Defend Martin Luther King in the Struggle for Freedom in the South and called their attention to the fact that I had received a letter demanding a retraction for an ad that had appeared in The New York Times and that my name—that I had never given my consent and I did not sign such an ad and I did not have the authority to make such a retraction and, of course, since this was their matter that I wished they would attend to it.

Q. What were you told by the person you talked to?

A. They said that they would look into it and take care of it.

Q. Well, did they?

A. I really don't know.

Q. You never followed up on it at all?

A. Yes, I called them again.

Q. What was the content of that conversation?

A. Well, they said they were working on it.

[fol. 1923] Q. Are they still working on it?

A. I really couldn't say. I don't know any more about it than you do.

Q. You haven't bothered yourself with it since that time. Is that right?

A. Yes. My attorneys are here now representing me.

Q. But you never told Mr. Sullivan that you didn't publish it. Is that right?

A. No. I have already testified to that and I said that I never did.

Q. And you never complained to The New York Times about it.

A. That's still my testimony. Yes.

Q. And you don't know what the committee did.

A. I don't know.

Q. All right. That's all.

Redirect examination.

By Lawyer Gray:

Q. One further question. When was the first time you learned that A. Philip Randolph had written such a letter as has been testified to in this case?

A. I believe it was yesterday during the testimony here in this Court.

Q. It was since this Court has been in session trying this case.

A. Yes, that is correct.

Q. All right. That's all.

Recross examination.

By Mr. M. R. Nachman, Jr.:

Q. Did you make any effort to contact A. Philip Randolph after you found out yesterday?

A. No. The case is now in the hands of my attorneys and I have not made any.

Q. All right. That's all.

[fol. 1924] Fred L. Shuttlesworth, having been duly sworn, was called as a witness in his own behalf and testified as follows:

Direct examination.

By Lawyer Gray:

Q. State your name to the Court and jury, sir.

A. Fred L. Shuttlesworth.

Q. What is your occupation, sir?

A. I am a minister of the Bethel Baptist Church located in Birmingham, Alabama.

The Court: What did you say your name is?

The Witness: Fred L. Shuttlesworth and I am a minister of the Bethel Baptist Church in Birmingham, Alabama.

By Lawyer Gray: (Continuing)

Q. Speak up so that the Court and jury and the lawyers here can hear you. Now, I show you this ad identified as Plaintiff's Exhibit No. 347 and ask you to look at it. Does your name appear on that ad, sir?

A. Yes.

Q. Did you publish the ad?

A. I did not.

Q. Did you cause the ad to be published?

A. No.

Q. Speak up a little louder, please. Did you authorize any person to use your name on that ad?

A. No, I did not.

Q. Did you authorize any person or any committee to use your name in the furtherance of the work of "The Committee to Defend Martin Luther King and the Struggle for Freedom in the South"?

A. I did not.

Q. Are you a member of "The Committee to Defend Martin Luther King and the Struggle for Freedom in the South"?

A. Not to my knowledge.

Q. Did you have any prior knowledge that this ad would [fol. 1925] appear in The New York Times?

A. I did not.

Q. Did you request that The New York Times run this ad or did you pay The New York Times or any other agency for them to publish this ad?

A. I did not.

Q. Prior to the publication of this ad in question, did any representative from The New York Times contact you to ascertain whether you had given your consent for your name to appear on this ad?

A. No.

Q. Did you receive a letter from Commissioner Sullivan requesting that you retract statements mentioned in the ad?

A. I did.

Q. Did you reply to that letter?

A. I did not.

Q. Tell the Court why you did not reply.

A. I had not written anything to be retracted as the letter demanded and neither had I seen the material which the letter called upon me to retract.

Q. When was the first time you saw this ad?

A. I believe it was near the 1st of May. I was in New York City.

Q. Was that before or after the suit was filed?

A. It was after the suit was filed.

Q. Did your copy of the Complaint contain a copy of the ad?

A. It did not.

Q. Now, you have heard a great deal of testimony here with reference to a letter which purportedly was written by A. Philip Randolph. Did you know such a letter existed prior to the trial of this case?

A. No, I did not.

Q. Did you authorize him to use your name in the furtherance of the work of the committee?

A. I did not.

Q. All right. That's all.

[fol. 1926] Cross examination.

By Mr. M. R. Nachman, Jr.:

Q. You never answered Commissioner Sullivan's letter, did you?

A. I did not.

Q. You never communicated with him in any way, did you?

A. No, I didn't.

Q. You never denied to him nor publicly admitted that you had published this letter. Is that correct?

A. I did not.

Q. Did you ever write to The New York Times about this matter?

A. About retracting the ad? I did not.

Q. About anything concerning the ad.

A. No.

Q. You never wrote and requested that they publish in their letters to the Editor column or anywhere else your statement that you had nothing to do with it.

A. I hadn't written anything to be retracted. No.

Q. You never wrote such a letter?

A. I did not.

Q. You never wrote such a letter to The New York Times asking that they print you hadn't done any such—

A. I did not.

Q. Did you ever ask the New York Times to send you a copy of the ad or ask anybody to send you a copy of the ad?

A. I did not.

Q. You just saw it casually sometime when you were in New York around May—

A. The first time I saw it was in New York City.

Q. How long ago was that? Did you say it was in May?

A. I believe it was the first—I believe it was before the first Sunday in May, I believe, if I recall correctly.

Q. When did you get this letter from Mr. Sullivan?

A. I don't know. I don't remember the date. It might have been in April sometime. Maybe it was around April [fol. 1927] 18th or 20th, I guess. I don't remember the exact date.

Q. Now, I show you this receipt which is an exhibit identified as 362 and I ask you whether or not that's your signature there.

A. That is my signature. Yes.

Q. What is the date on that receipt?

A. April 11th, 1960.

Q. Do you have any disposition to correct that date as having been the date you received the letter?

A. I don't.

Q. Then, from that date, April 11th, 1960 until some time in May you made no attempt whatsoever to get hold of a copy of this ad. Is that your testimony?

A. I did not. I took the position that I hadn't written that ad.

Q. How did you happen to see the ad up in New York?

A. I went by the office of the Committee to Defend Martin Luther King and they had a stack of them there and I really didn't know what they were and I was surprised to find all of these signatures on them and I asked if I could see one and they said I could have as many as I wanted and so I took several copies.

Q. Why were you surprised to see all of those signatures on the ad?

A. Well, these were names of people about whom I had read in the paper—celebrities and so on.

Q. What surprised you about seeing their names on it?

A. Well, I mean, such a large number of celebrities.

Q. Well, I understand what you mean but what I want to know is why were you surprised in seeing their names on the ad?

A. Well, maybe the word surprised is the wrong word to use but I just asked to have a copy of it.

Q. All right, that's all.

Mr. Embry: No questions.

[fol. 1928] J. E. Lowery, having been duly sworn, was called as a witness in his own behalf and testified as follows:

Direct examination.

By Lawyer Gray:

Q. State your name to the Court and jury, sir.

A. J. E. Lowery.

Q. Where do you live, sir?

A. In Mobile, Alabama.

Q. What is your occupation?

A. Methodist minister.

Q. Now, I show you Plaintiff's Exhibit No. 347 and ask you whether or not your name appears on that ad?

A. Yes, it does.

Q. Did you sign that ad?

A. No, I didn't.

Q. Did you publish the ad?

A. No, I did not.

Q. Did you cause the ad to be published?

A. No, I did not.

Q. Did you authorize any persons to use your name on that ad?

A. I authorized no person to use my name on this ad.

Q. Did you authorize any person to use your name in the furtherance of the work of the "Committee to Defend Martin Luther King and the Struggle for Freedom in the South"?

A. I authorized no person to use my name on any committee to defend Martin Luther King.

Q. Are you a member of that committee?

A. I am not.

Q. Did you have any knowledge prior to the time this ad was published that this ad would appear in The New York Times?

A. I had no knowledge of it.

Q. Did you have any prior knowledge that your name would be affixed to that ad?

[fol. 1929] A. I had no idea of it.

Q. Did you request or pay The Times or any other organization or person to have that ad published in your behalf in The New York Times?

A. No, I did not.

Q. Where was the first time you saw that ad?

A. The ad?

Q. Yes.

A. You mean in the paper or a copy of it?

Q. A copy of it.

A. I saw a copy of the ad sometime in May. I don't remember the date.

Q. Where were you when you saw it?

A. I was in Montgomery.

Q. Here in Montgomery?

A. Yes.

Q. Now, prior to that time, had you received a letter requesting that you retract that ad from Commissioner Sullivan?

A. Yes, I did receive a letter from Commissioner Sullivan.

Q. Did you reply to that?

A. No. As I recall, the letter didn't ask for a reply. It asked me to publish a retraction of equal size or something like that to an ad that appeared in The New York Times and I had no knowledge of any ad and so I could make no retraction.

Q. Was it at that time—was that the first time that you knew that your name was in any way being associated with this ad when you received the letter from Commissioner Sullivan?

A. It was the first time I knew that there was an ad or that my name was associated with the ad and that was when I got the letter.

Q. I believe you received that letter on or about April 11th. Is that about when you received it?

A. I think so.

Q. Is it your testimony that even though this ad came out on the 29th of March that you didn't know anything about it and about your name being affixed to it until you received Commissioner Sullivan's letter about two weeks later?

[fol. 1930] A. That is correct.

Q. Now, prior to the date of the publication of the ad in question, did any representative of The New York Times contact you to ascertain whether or not you had given your consent for the use of your name?

A. No. No representative of The New York Times contacted me.

Q. Now, I think you testified that you didn't authorize anyone to—that you didn't reply to Commissioner Sullivan's letter—did you take any affirmative action to try to find out how your name got on the ad?

A. Well, the first thing I did when I got the letter was to try to find the paper in which the ad was to appear and I was unable to do so. What was your question now?

Q. My question was whether you took any affirmative action to try to determine how your name got on the ad after you got the letter from Commissioner Sullivan?

A. As I recall, I tried to find a copy of the paper and before I could find a copy of the paper the suit was filed and then I sought advice of counsel.

Q. All right. That's all.

Cross examination.

By Mr. M. R. Nachman, Jr.:

Q. You never wrote to The New York Times and asked them to publish a letter stating that you had nothing to do with this ad?

A. No, I had no request from The Times at all—

Q. That was not my question. Did you ever write to the New York Times and ask The New York Times to print in its letters to the editor column a letter from you saying that you had nothing to do with this ad?

A. No. I never wrote to The Times.

Q. You never did anything like that.

A. No.

Q. And you never wrote to Mr. Sullivan.

A. No. Mr. Sullivan didn't ask for a reply. He simply asked me to retract the ad.

Q. You never denied to him in response to that letter that [fol. 1931] you had published this ad.

A. No, but I told you—

Q. I understand that, but that was on a deposition.

A. Yes.

Q. This past summer.

A. Yes.

Q. But you didn't communicate with Commissioner Sullivan in any way by letter or otherwise telling him that you had nothing to do with it.

A. Well, I got the letter from Mr. Sullivan just a few days after the suit was filed and so I sought out a lawyer to try to find out what I could do and the next thing I knew I was already coming here for a deposition and I told you

I had nothing to do with this ad and no responsibility at all for it.

Q. You came up here for a deposition June 25th, didn't you? I show you this deposition.

A. I believe that's about the date. Yes. I think that's approximately the date, yes.

Q. So that was more than two months after you received this letter from Mr. Sullivan, wasn't it?

A. Yes, it was after the suit was filed.

Q. All right. That's all.

Mr. Embry: No questions.

JOHN MURRAY, having been duly sworn, was called as a witness for the defendants and testified as follows:

Direct examination.

By Lawyer Gray:

Q. State your name to the Court and jury.

A. John Murray.

Q. Where do you live?

A. At 780 West End Avenue, New York City.

[fol. 1932] Q. What is your occupation, sir?

A. I am a writer.

Q. Are you familiar with the "Committee to Defend Martin Luther King and the Struggle for Freedom in the South"?

A. Yes, I am.

Q. Were you on March 29th of this year in any way associated with that committee or connected with that committee?

A. Yes, I was.

Q. In what way were you connected with that committee?

A. As a volunteer. As an individual volunteer so as to help in any way within my capacity that they could use me in my profession as a writer.

Q. Did the committee call upon you to do any work for it?

A. Yes.

Q. What did they call upon you to do?

A. They called upon me to help draft an ad for The New York Times together with two other writers and they asked us to form a committee to draft this ad—a committee of writers.

Q. Who composed that committee along with yourself?

A. That committee was composed of William Branch, a writer, and John Killens, another writer, and myself.

Q. Will you tell us whether or not you were furnished with any source materials to prepare this?

A. Yes. We were given a memorandum containing the substance of the material that was wanted for the ad to go into the ad.

Q. Who gave you that memorandum?

A. That memorandum was given to us by Bayard Rustin, the coordinator or Executive Director of the committee.

Q. You say at that time that Bayard Rustin served as supervisor—

A. I think he served as Executive Director. He was the man in charge of the committee on the staff.

Q. Now, after the ad had been drawn, were you familiar with the names that appeared on the ad?

A. (No answer from the witness.)

[fol. 1933] Q. I don't mean whether you were familiar with the persons personally but did you know what names went on the ad that you were there doing the drafting of?

A. Yes, I was familiar with the names because the names were part of what was to go into the ad and that list of names constituted all the people who subscribed to the sense of the ad.

Q. Now, will you tell the Court and jury and if possible in chronological order as best you can recall the events leading up to this ad being placed in The New York Times.

A. Well, after we were given this rather lengthy memorandum by Mr. Rustin in which a number of matters were underscored that he felt should be definitely in the ad and incorporated into it, we got together and gave it some kind of appealing form—what we thought would be an appealing form for the ad. Then, after that, I was asked

by Mr. Rustin to get together with the people at the Union Advertising Company so far as lay-out was concerned. I did that and they got up a lay-out of the ad. Then, I think, it went to The New York Times—

Q. Let me interrupt you for a minute. At this time will you tell the Court and jury—I would like you to refer to Plaintiff's Exhibit No. 347 and tell the Court and jury when this originally went to the ad whether or not it contained all of the names as now appear on the ad?

A. No. It didn't contain this body of names. The ad was actually a little different in the lower one-third section. It was the same as this down to here.

Q. Now, point out to—are you saying—I would like you to hold it up so that the jury can see it.

Mr. Baker: What stage of the ad are we at now?

Lawyer Gray: This is the initial stage of the ad.

Mr. Baker: When it reached The Times?

Lawyer Gray: Yes.

Mr. Nachman: These names weren't on the bottom of it?

Lawyer Gray: That's what he's testifying.

The Witness: That's right. The first draft of the ad—the ad was substantially the same down to here. Then this [fol. 1934] list of officers which are now listed underneath the title of the ad were up here and this part here—

Mr. Embry: When you say here, I wish you would indicate what you mean.

The Witness: All right, sir. These names that are now listed here below the title or the address of the committee, Chairman, A. Philip Randolph, and so forth, were arranged differently. These were all laid out up here where you now have the listing of the ministers. Furthermore, the name of the committee to defend Martin Luther King and so forth was much larger and that took up the bottom most part of the ad.

By Lawyer Gray: (Continuing)

Q. Now, in the ad originally, did the ad contain this material? "We in the South who are Struggling Daily for Dignity and Freedom Warmly Endorse this Appeal"? Then, did it go ahead and name any number of ministers

from the South including Rev. Abernathy, Rev. Shuttlesworth, Rev. Seay and Rev. Lowery? Now, did those names appear on the ad as it went to The New York Times originally?

A. No, sir. They did not.

Q. They did not.

A. They did not.

Q. Now, did those names appear on the list of names that was taken to The New York Times and attached to the letter that was sent by A. Philip Randolph saying that those persons had given their consent?

A. No. Those names did not appear in that list.

Q. Now, will you tell the Court and the jury whether or not in the letter that A. Philip Randolph sent to The New York Times—did it purport to say that those ministers, including the four named defendants, had given their consent for their names to appear on that ad?

Mr. Embry: We object to that, Your Honor. The letter speaks for itself.

The Court: Yes. Do you have the letter?

Lawyer Gray: Yes, sir. The letter is here in evidence. [fol. 1935] The Court: All right. Read the letter and see what it says. Now, where is the list?

Lawyer Gray: That's the question, Your Honor. I asked the same question about the list.

The Court: Does the witness know where the list is?

The Witness: May I see this?

Lawyer Gray: Yes. Here it is.

The Witness: Mr. Rustin gave me the original copy of this letter plus the list of names that was to appear under the material of the ad. That list of these names here below the caption "Your Help is Urgently Needed" and above "We in the south" and so forth. This list here—

By Lawyer Gray: (Continuing)

Q. Now, in that list of names does the names of the defendants, Abernathy, Shuttlesworth, Seay and Lowery appear?

A. No, sir. They do not. They do not appear on that list.

Q. Their names did not appear in the list that A. Philip Randolph said had consented to the use of their names in the furtherance of the work of the committee.

A. That is correct.

Q. All right. Go ahead.

A. After this first proof was ready, it came back and I think each of the writers got a copy and various other people on the committee and Mr. Rustin, after the corrections were made, Mr. Rustin called me up and said that he would like me to come up—the other two writers could not come as they were involved in something else and he asked me could I possibly come up to consult with him because he was not satisfied with the ad as it was and since the ad had to be okayed the following morning in order to make a certain issue that he was shooting for and he asked if I would not get with him that night or that evening and I came up to the office and he laid out the ad and set it out on the table there and said that he was not satisfied with the ad and said that the ad didn't have the kind of appeal that he felt it should have.

[fol. 1936] I did not know exactly what he meant or what he was driving at and he couldn't express it clearly himself but I was more or less guided by what he said because he had experience along these lines and he felt that the ad should have a greater appeal if it was to get the kind of response of funds that the committee needed. Various ideas were exchanged and finally about—after about an hour of discussion he said that he suddenly got the idea that he thinks will do it. He then opened a drawer and pulled out a list of names that was the list of the individual ministers whose churches were affiliated with the Southern Christian Leadership Conference and he then said we can list these names—he said we can list these ministers and place it that we from the south support this appeal. Then—

Q. Did he, or did you, get their consent before their names were placed on it?

Mr. Nachman: We object to that. He is testifying about what someone else did, Your Honor.

The Court: Well, if he has personal knowledge—

Lawyer Gray: Yes, Your Honor. Personal knowledge. He was with them and he knows—

The Witness: Well, at that particular time I was present. As a matter of fact, a question or something like that came up because I said to Mr. Rustin after he made this suggestion, I said, if you want the ad to get to The Times tomorrow, how are we going to contact all of these people in all of these cities and he said we don't have to because by virtue of the fact that they all belong to the S.E.L.C. and since the S.C.L.C. supports the work of the committee that he felt there would be no problem at all and that you didn't even have to consult them.

Mr. Nachman: What is S.C.L.C.? I don't know whether we object to the question or not.

Mr. Embry: I don't know what it means either—

Lawyer Gray: I will ask him. What do you mean when you say S.C.L.C.?

The Witness: Well, my understanding is the S.C.L.C. is [fol. 1937] a southern organization. The Southern Christian Leadership Conference, to which these ministers here listed belong.

By Lawyer Gray: (Continuing)

Q. And Mr. Rustin said that he assumed that it was all right to use their names.

A. Yes. Automatically he assumed that they would approve of it and it wasn't necessary to talk to them.

Q. But no one got their authority to affix their names.

A. Not to my knowledge. What happened immediately after that was that he had a young lady who was there at the typewriter to type out a list and put this sentence in and incorporated it and tacked it on to the ad and sent it back to the agency and he called the man at home, in fact, because the office was closed and said that the ad would be over the first thing in the morning and that he would like to have this incorporated in it and the rest of it was all right and that's the point it was gotten in and gotten over to The Times.

Q. So, then, it was Mr. Rustin who decided on his own to just place their names on that ad.

A. Yes, sir.

Q. And he decided to do that on the spur of the moment.

A. That's right.

Q. Was that the night before he went back to The Times for final publication?

A. I don't know whether it went back to The Times the next morning. I think it first went back to the agency because they had to re-draft the thing for a second proof.

Q. Now, did it come back to you before it went on to The New York Times from the agency?

A. I think so. I think it did.

Q. When you say agency, you are referring to the Union Advertising Agency?

A. That's right.

Q. All right. That's all.

[fol. 1938] Cross examination.

By Mr. M. R. Nachman, Jr.:

Q. Do you remember having a conversation with Mr. Aronson of The New York Times when this ad was brought in?

A. Yes, sir.

Q. Do you remember anything being said about sending some authorization along later, that is, authorization for the use of the names on this ad?

A. No, I don't think so. I believe that I had the authorization with me. I brought this letter.

Q. You brought the Randolph letter at the same time you brought the draft of the ad. Is that correct?

A. No. I went to The New York Times—it was the agency that was drafting the lay-out of the ad. That's right. I remember now what happened.

Q. The advertising agency—

A. That's right. I remember what happened now. When I first went to The Times—the first time I went there, I did not go in the capacity of a writer. I did it actually as a favor for Mr. Rustin who could not go himself because he was busy and he asked me to drop in and place the ad and to give them the order for the ad.

Q. At The New York Times.

A. At The New York Times.

Q. And the person you talked to there was Mr. Aronson.

A. Yes, Mr. Aronson.

Q. Now, when you took that ad in there, did you also take the letter from A. Philip Randolph?

A. Yes, but I didn't have the ad with me at that time.

Q. What did you take with you?

A. I just placed the order for the ad.

Q. I see. You didn't have the ad with you.

A. That's right.

Q. You placed the order for the ad.

A. I placed the order for the ad, yes. I did that so they [fol. 1939] would reserve space for the ad.

Q. Do you remember approximately what date that was? Do you remember in terms of when the ad came out? Was it a week before the ad came out or ten days before the ad came out or just how long was it?

A. I would say it was within two weeks before.

Q. Within two weeks before?

A. Yes, but I can't be sure.

Q. Did you have any written material at all that you presented to Mr. Aronson or did you just tell him that the ad is coming and I want to arrange to place it?

A. To be honest with you, I don't remember because I am confused about the sequence of events such as having the physical thing in my hand and as to whether the agency had it or I had it or whether they were working on the ad or whether I actually had it with me—I don't know. I do remember that I went to place the ad though.

Q. Do you remember ever having delivered a written ad to The New York Times?

A. I don't know. I am not sure whether I took it over there or whether the Union Advertising Agency did.

Q. Would this be a correct statement? On or about March 25th, 1960 one John Murray brought to The New York Times plant at 229 West 43rd Street in the City of New York the original copy from which the advertisement referred to in this question was formed?

Mr. Embry: Your Honor, we object to that. That doesn't ask the witness what happened. It is telling—

Mr. Nachman: Did that happen?

Mr. Embry: We renew our objection.

Mr. Nachman: Did that ever happen? Did you ever take on or about March 25th, 1960—did you ever take to The New York Times plant in New York City at 229 West 43rd Street the original copy of the advertisement that you have before you there, Plaintiff's Exhibit No. 347?

The Witness: I may have. I may have had a copy of the ad with me which was also given to the Union Adver- [fol. 1940] tising Agency simultaneously for lay-out. I can't be certain. I might have had the ad with me.

By Mr. M. B. Nachman, Jr.: (Continuing)

Q. You just aren't sure whether you had it with you or whether you didn't. Is that right?

A. That's right.

Q. Now, have you ever been to Montgomery, Alabama before?

A. No, sir.

Q. As I understand it, you and two other men wrote this ad.

A. That's right.

Q. And you wrote it from source material.

A. That's right.

Q. What was that source material that you wrote it from?

A. That source material was a memorandum that was given to us by Mr. Rustin.

Q. Was it documented in any way?

A. No, it was not.

Q. Did it refer to any specific sources such as newspaper articles or anything like that?

A. No. No, it didn't. I believe it was a memorandum that he dictated.

Q. To his secretary?

A. To someone. Perhaps a secretary. He dictated it in which he felt should be the general direction of the ad

and that it should contain certain specific things that he outlined within that ad.

Q. Where did he get his information?

A. I don't know. I assumed he got it from newspapers. There were a lot of stories printed in almost all of the papers morning and afternoon and I assume whatever was in that he got from some source—

Q. Did he refer to any newspaper articles in this memorandum?

A. No.

Q. Did he cite any?

A. No, he didn't.

Q. What does Rustin do? What is his profession?

[fol. 1941] A. Well, Mr. Rustin, I understand, is a professional organizer—a professional staff person with organizations. He has been with various organizations in the capacity of an Executive Director and coordinator and so forth.

Q. I see. A professional fund raiser.

A. I don't know whether it's a professional fund raiser or not but I guess it is something along those lines.

Q. What does he organize? You say he is an organizer. What does he organize?

A. Well, by an organizer, I mean someone who carries on the executive function in organizational work of some kind. Whether it is a committee like this—I just recall another organization that I know he has been affiliated with and that is the War Resisters League.

Q. The what?

A. The War Resisters League. That is a league for pacifism—no war, and so forth.

Q. I see. He has organized an appeal for that group too.

A. Yes. He works along those lines.

Q. Do you know of any other groups he has organized for?

A. No, I don't.

Q. Now, did you satisfy yourself that the facts that you were going to put into this ad were correct or that the purported facts which were going into the ad were correct?

A. Well, no, sir—

Lawyer Gray: We object to that. He simply said that he used the source material that was furnished to him.

The Court: I believe the question is admissible. I will let it in and give you an exception.

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. You may answer the question.

A. I took it for granted that these facts were as stated. I felt no reason, or any need to check on them. I just assumed automatically that everything in that ad was as stated.

[fol. 1942] Q. I see. Even though now sources were cited, you didn't bother to check it yourself.

A. No. As a matter of fact, when Mr. Rustin on some other occasions gave out memorandum material to be written—a letter or something to be drafted—it was not his practice to cite source material or to be questioned about it because the people just took it for granted that he was in a better position to know of the facts as a professional person at the source, so to speak, and it was not questioned.

Q. Has he been to Montgomery?

A. I don't know.

Q. Now, when he first gave you this memorandum and I call your attention to paragraph No. 3 on the left hand column of this ad identified as Plaintiff's Exhibit Nos 347 which reads "In Montgomery, Alabama, after students sang 'My Country, 'Tis of Thee' on the State Capitol steps, their leaders were expelled from school, and truckloads of police armed with shotguns and tear-gas ringed the Alabama State College Campus. When the entire student body protested to state authorities by refusing to re-register, their dining hall was padlocked in an attempt to starve them into submission." Did you read that?

A. Yes, I read that.

Q. Was that the way that paragraph was when you first got it with the memorandum or did you give it that added touch for appeal?

A. Well, it would be a little difficult at this time to recall the exact wording in the memorandum but the sense of what was in the memorandum was certainly the same as what is in here. We may have phrased it a little differently here and there.

Q. I see. Your purpose was to rev it up a little bit to get money, I take it.

A. Well, our purpose was to get money and to make the ad as—to project it in the most appealing form from the material we were getting.

Q. Whether it was accurate or not really didn't make much difference, did it?

A. Well, that did not enter the—it did not enter into consideration at all except we took it for granted that it was [fol. 1943] accurate—we took it for granted that it was accurate—they were accurate—and if they hadn't been—I mean we would have stopped to question it—I mean we would have stopped to question it. We had every reason to believe it.

Q. Do you write for a lot of publications?

A. Yes.

Q. What other writing have you done besides this?

A. Well, I had a rather wide range of writing. I have been a scenarist in Hollywood for several studios—a playwright and a composer and lyricist for a number of Broadway shows and I have also done different types of writing such as industrial films and done writing and films for the Army, intelligence films, which is a different type of writing altogether.

Q. Have you ever done any writing such as this before for organizations—run ads to get money?

A. No, I haven't.

Q. This is the first one of this type you have ever done?

A. That's right.

Q. Now, I understand from your testimony that March 29th was the target date so to speak to get this ad into the paper. Is that correct?

A. Well, I don't know whether that particular date was the target date or not but I think what would have happened if that particular date had been missed—they might

have had to wait four or five days in order to get desirable space. In other words they were shooting for that date in order to get the ad in.

Q. In other words, they wanted it in just as soon as possible.

A. That's right.

Q. And that was the earliest date you could get it in.

A. That's right.

Q. All right. That's all.

Mr. Embry: No questions.

Defendants Rest

Lawyer Gray: The defense rests, if the Court please.

The Court: There is no further testimony?

Lawyer Gray: Your Honor, we would like to re-file our Motions to Exclude—

[fol. 1944] The Court: Well, just so we have a complete understanding that all the testimony is closed. Gentlemen of the jury, there are some very important legal questions being raised here that I would like to think over and turn over in my mind because this case means a great deal to all of the parties and everybody concerned and I am not one of these people who shoot the law from the hip —I don't believe in that sort of thing. I will let you gentlemen go until three o'clock because I must have some time to study these things over. While you are on the outside don't talk about this case or discuss it with anybody. Don't have anything to do with me or the Clerk or the lawyers or anybody and don't discuss the case. We will recess until three-thirty.

(At this point, Court was recessed and reconvened at 3:30 and the following occurred outside the presence of the jury.)

Court's Overruling of Motions of Defendants, Abernathy, Shuttlesworth, Seay and Lowery to Exclude All of the Plaintiff's Evidence

The Court: Note this for the Record, Mr. Reporter. Now comes each of the following defendants, Ralph D.

Abernathy, Fred L. Shuttlesworth, S. S. Seay, Sr. and J. E. Lowery and files herein their Motion to Exclude all of the Plaintiff's Testimony and argues same to the Court and the Court is of the opinion that none of said Motions are well taken and it is, therefore, ordered that the Motions of Ralph D. Abernathy, Fred L. Shuttlesworth, S. S. Seay, Sr. and J. E. Lowery to exclude the Plaintiff's evidence be and the same are hereby denied. Now, at the conclusion of all the testimony in the trial, and all of the parties having rested their cases, the said defendants, Ralph D. Abernathy, Fred L. Shuttlesworth, S. S. Seay, Sr. and J. E. Lowery, each separately re-files his Motion to Exclude all of the evidence of the Plaintiff and same being argued to the Court and now being understood by the Court, it is considered, ordered and adjudged by the Court that each of said Motions hereby are overruled and denied and each defendant has an exception to the Court's ruling.

[fol. 1945] (Court reconvened Thursday, November 3, 1960.)

(The following occurred in Chambers outside the presence of the jury.)

Mr. Embry: Your Honor, there is one statement that I would like to make to the Court in connection with the request of The New York Times for the general charge and a request for the general charge as to each count, and I would like to call Your Honor's attention to a variance in the pleadings and proof in this case as to each count in connection with that request for the general charge. Each count claims punitive damages against all of these defendants and all the defendants are joined as parties to each count and there being no evidence from which the jury could find that the other defendants—the individual defendants—were guilty of malice or which under the law amounts to malice, which would entitle that to be submitted to the jury as to those other defendants under a claim of punitive damages and our request is based on the proposition that where some of the defendants—they are all cast in the same mold—seeking damages on the same theory of law and where they claim punitive damages and there is no

evidence from which the jury would be authorized to find a verdict against any one defendant, then you cannot submit it to the jury for their consideration against any of the defendants.

Lawyer Crawford: There is no conflict in the evidence as we see it, Your Honor, as applies to these individual defendants. The testimony has shown that the individual defendants knew nothing and had no knowledge of the advertisement and no knowledge of the writing or the publication until they received a letter demanding retraction. The testimony further showed that they did not consent and did not authorize it. Now, with reference to the letter from Randolph, the witness, John Murray, who wrote the ad, testified that the only reason why those individual names were on that was that when this ad was brought back from the Union Advertising Agency that Bayard Rustin, who [fol. 1946] was one of the professional organizers, said that we need something more appealing and he came up with the idea and said, I've got it, and he pulled out a list of names and he said put these names on it, and if you recall, Your Honor, that is the letter Mr. Randolph wrote which went to The New York Times and to the Union Advertising Agency and did not have the names of the individual defendants thereon. The individual defendants knew nothing of the ad and had no time to give their consent as Mr. Murray stated in his testimony that he did it on the spur of the moment and he said, I am sure it will be all right. We respectfully request the Court to give us the affirmative charge. We have the testimony of the individual defendants unequivocally denying knowing anything about the publication of this ad until after the letter of retraction and after it became a matter of public knowledge and in a local newspaper and hearsay that they were being sued.

The Court: I will overrule the Motions and you may have an exception.

Mr. Embry: We except, if the Court please.

Lawyer Gray: We except, Your Honor.

Lawyer Crawford: We except, Your Honor.

[fol. 1947]

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

AT LAW

Case No. 27416

L. B. SULLIVAN, Plaintiff,

vs.

THE NEW YORK TIMES COMPANY, a Corporation, RALPH D. ABERNATHY, FRED L. SHUTTLESWORTH, S. S. SEAY, SR., and J. E. LOWERY, Defendants.

ORAL CHARGE AND EXCEPTIONS THERETO

The Court: Gentlemen of the Jury, before getting down to the immediate points of law here as the Judge of the Court I would like to join with the attorneys in this case in thanking you for the attention, care and interest which you have shown in listening to the testimony in this case and for your patience in listening to the arguments of counsel. It is always a pleasure to try a case with a jury that is interested and has patience and I wish to thank you for that. Now, one other thing I would like to say although I think it is hardly necessary—one of the defendants in this case is a corporate defendant and some of the others belong to various races and in your deliberation in arriving at your verdict, all of these defendants whether they be corporate or individuals or whether they belong to this race or that doesn't have a thing on earth to do with this case but let the evidence and the law be the two pole stars that will guide you and try to do justice in fairness to all of these parties here. They have no place on earth to go to settle this dispute except to come before a Court of our country and lay the matter before a jury of twelve men in whose selection each party has had the right to participate and out of all the jurors we had here at this term of Court, some fifty jurors, the parties here have selected you because they have confidence in your honesty, your integrity,

your judgment and your common sense. Please remember, [fol. 1948] gentlemen of the jury, that all of the parties that stand here stand before you on equal footing and are all equal at the Bar of Justice.

Now, let us see if I can tell you briefly what this case is about. There are two counts in the Bill of Complaint and I will not try to read them to you at length. The plaintiff in the case is L. B. Sullivan, an individual. The five defendants in the case are The New York Times Company, a corporation, and the following individuals: Ralph B. Abernathy; Fred L. Shuttlesworth; S. S. Seay, Sr. and J. E. Lowery. Now, it is the contention of the plaintiff, Mr. Sullivan, that on or about the 29th of March, I believe it is, in 1960, a certain publication was made in The New York Times on page 25 of the March 29th, 1960 issue in an advertisement entitled "Heed Their Rising Voices." You have seen the witnesses with this advertisement and you have seen them and heard them testify and you have seen the ad and, of course, you will have a photostatic copy on the back of this Complaint to take to the Jury Room with you. It is the contention of the plaintiff, Sullivan, that the statements made in this advertisement, and one of the statements is set out in Count 1 which you heard read and another statement is set out in Count 2, which I will not read again because you are familiar with them and you will have the Complaint with you and it is alleged that they contain false and defamatory matter against him and it is his contention that the extracts from this advertisement contained in these two Counts in the Complaint imputed improper conduct to him and it is his contention that this advertisement subjected him to public contempt, to ridicule, to shame and prejudice, and prejudiced Mr. Sullivan in his public office as Police Commissioner, in his profession, in his trade and in his business and all was done, he claims, with the intent to defame him. Now, in the first count of the Complaint which I will read to you he says this was false and defamatory and injured him in his profession. "In Montgomery, Alabama, after students sang, 'My Country, 'Tis of Thee' on the Capitol steps, their leaders were expelled from school, and truckloads of police armed with shotguns and [fol. 1949] tear-gas ringed the Alabama State College

Campus. When the entire student body protested to state authorities by refusing to re-register, their dining hall was padlocked in an attempt to starve them into submission." "Again and again the Southern violators have answered Dr. King's peaceful protests with intimidation and violence. They have bombed his home almost killing his wife and child. They have assaulted his person. They have arrested him seven times—for 'speeding,' 'loitering' and similar 'offenses'. And now they have charged him with perjury—a felony under which they could imprison him for ten years." Then, the next part of the advertisement which is objected to is contained in paragraph number 2 which looks like practically the same thing here.

Now, we have a law in Alabama which says that when a public officer contends that a publication libels him concerning his official conduct that he cannot recover any vindictive or punitive damages unless, five days before he brings his law suit he has made written demand upon the defendant for a public retraction of the charge made and published, and that the defendant has failed or refused within five days to make a full and fair retraction of the published matter or the charge. Under the law, if a defendant fails to make a full and fair retraction, within five days after plaintiff's demand, then the plaintiff is not barred from the recovery of punitive damages if he would be otherwise entitled to claim them. Now, the plaintiff in this case is claiming damages in the sum of five hundred thousand dollars. Now, the defendants have come into Court, as is their right, and they have filed what we call the Plea of the General Issue and that is a general denial that they are guilty of the things charged. They are denying these things that are set out in the Complaint were published of and concerning Sullivan, the plaintiff, they deny that the matter published was defamatory of the plaintiff, Sullivan, and the defendant, The Times, also denies that the ad referred to Sullivan, the plaintiff, or charged him with something that is libelous and they deny that the ad itself charged the plaintiff with any misconduct. Now, there are four individual defendants and they are Ralph D. Abernathy, Fred L. Shuttlesworth, S. S. Seay, Sr. and J. E. Lowery, and they deny [fol. 1950] and plead the general issue too and they deny

before the jury that they signed the ad and they say they did not authorize the use of their names and they say they did not know the ad was being published and never did give their consent to the use of their names. So, when those pleas are filed, the Plea of the General Issue, the law steps in and says to the plaintiff, Sullivan, what? It says, very well, Mr. Plaintiff, if you would have a verdict at the hands of the jury awarding you damages and upon which the Court would be authorized to render a judgment at some later date or on the same day, then you must do this. You must reasonably satisfy the jury from the evidence that what you say in your whole Complaint or in Count 1 or in Count 2 is true. So that's the burden that rests on the plaintiff here today—not to satisfy you beyond all reasonable doubt as would be the case in a criminal case but simply to convince you to your reasonable satisfaction that what he says and what he claims in this Complaint is true. Now, as stated, the defendants say that the ad complained of does not name the plaintiff, Sullivan, by name and that the ad is not published of and concerning him. Now, the law does not always require the person suing for damages in a libel case to be named by name because sometimes the alleged libelous matter may be directed at a group or the class of people of which the plaintiff says he is a member, but in such a case where the libel is addressed to a class or a group the party suing, that is, the plaintiff, Sullivan, as a member of the group referred to must show by the evidence to your reasonable satisfaction that the words objected to were spoken of and concerning him. The reason for this being that while any one of a class or group may maintain an action because of alleged libelous words, he must show to the reasonable satisfaction of the jury that the words he complained of apply especially to him or are published of and concerning him. Now, when matter alleged to be libelous is published, you are not to read it critically but you read it as the average, reasonable and normal person of ordinary intelligence in the community, the place, the city of Montgomery would read this advertisement. Now, with reference to the publication I will say this. The publication of defamatory material in the legal [fol. 1951] sense is a communication, the passing on of this

material to any person or persons other than the person who is bringing the suit. If the communication is in written form it would be libel instead of a slander. If I said something to you orally or said something about you orally—we call that a slander but if I read it, print it, or put it in a cartoon, then we call that libel. Every person who has any part in such a publication, that is, a written communication, except a disseminator, is held to be strictly libel. Now, the general rule of law is that if a libel is directed at a group or a class of people it can form the basis of a law suit by an individual member of that group provided that he can show that although he is not called by name, while he is not mentioned by name, in that advertisement, yet a person in the place of publication, Montgomery, reading it, can readily identify the plaintiff as the person spoken of and concerned by the publication. So, at the very outset of your deliberations you come to this question. Were the words complained of in Counts 1 and 2 of this Complaint spoken of and concerning the plaintiff, Sullivan? That's the burden he has. He must show that to your reasonable satisfaction and if the evidence in this case does not reasonably satisfy you that the words published were spoken of or concerning Sullivan or that they related to him, why then of course he would not be entitled to any damages and you would not go any further. Now, the plea filed by the defendants in this case or what we call the general issue, raises the question of the truth of the things published. Now, we have a law in Alabama that in an action of this kind the truth of the words written or published, or the circumstances under which they were published, may be given in evidence under the plea of the general issue in mitigation of damages. Those are the words of the statute.

Now, the Court is of the opinion and so charges you, gentlemen of the jury, that the matter complained of in Plaintiff's Exhibit No. 347, that's the controversial ad which you will have before you, and parts of which are set out in the Counts here in the Complaint, belongs to that class of defamation called in law, libel per se. Now, defamatory words to be actionable per se are those which [fol. 1952] on their face and without the aid of any other

evidence or any other extrinsic proof are recognized by the law as being injurious. Writings libelous per se carry the presumption of falsity and of malice. Now, in the case of words actionable per se, that is, actionable by themselves, their injurious character is a fact of common notoriety, established by the general consent of men. The libel in a case of this kind is such that in the natural and proximate consequences it will necessarily cause injury and damage to the person concerned in his official, public or social relations. And the law in such a case implies legal injury from the bare fact of publication itself. We can say, as part of the law in this case, that a publication is libelous per se when they are such as to degrade the plaintiff in the estimation of his friends and the people of the place where he lives, as injure him in his public office, or impute misconduct to him in his office, or want or official integrity, or want of fidelity to a public trust or such as will subject the plaintiff to ridicule or public distrust. All those kind of charges are called, libelous per se.

Now, gentlemen of the jury, the publication under consideration by you is not what we call a privileged communication, but it is unprivileged. That is, the publication was not made in the performance of some duty, political, judicial, or the like. So in a case of the kind that we have here, where the Court charges you that this libelous matter is libelous per se, then falsity and malice are presumed. General damages need not be alleged or proved but are presumed and any allegation in the Complaint of specific damages is not necessary. Punitive damages are available to the plaintiff and the Plea of the General Issue merely puts on the plaintiff, Sullivan, the burden of reasonably satisfying you of the publication of the matter in the advertisement by the defendants and that this publication was of and concerning him and was aimed at him.

Now, it is the contention of the plaintiff here that although you may believe, as to the four individual defendants, that they did not sign this advertisement and did not authorise it, yet it is the contention of the plaintiff, Sullivan, that [fol. 1953] the four individuals the four individual defendants after knowing of the publication of the advertisement and after knowing of its content, ratified the use of their

names, that is, that they approved and sanctioned this advertisement. In other words, the plaintiff, Sullivan, insists that there was a ratification of the advertisement and the use of their names as signers of the advertisement by the four individual defendants and we here define ratification as the approval by a person of a prior act which did not bind him but which was professedly done on his account or in his behalf whereby the act, the use of his name, the publication, is given effect as if authorized by him in the very beginning. Ratification is really the same as a previous authorization and is a confirmation or approval of what has been done by another on his account. Now, it is for you twelve jurors to say from all the evidence whether the four defendants ratified the advertisement now before you, that is, ratified that advertisement as I have defined the word ratification to you.

Now, gentlemen of the jury, if you are reasonably satisfied from the evidence before you, considered in connection with the Rules of Law the Court has stated to you, and you and I both have a part in rendering whatever judgment may be made in this case. You twelve men are what we call the finders of fact, the triers of the facts and I want you to know that every disputed question of fact in this case is left to you and as the Judge presiding at the trial of this case I do not have any opinion whatsoever about the facts of this case, and if I did, it would be highly improper for me to express that opinion in this case. So I leave every one of the disputed facts in this case to you. So, as I said, if you are reasonably satisfied from the evidence before you, considered in connection with the Rules of Law the Court has stated to you, you would come to consider the question of damages and, where as here, the Court has ruled the matter complained of proved to your reasonable satisfaction and aimed at the plaintiff in this case, is libelous per se then punitive damages may be awarded by the jury even though the amount of actual damages is neither found nor shown. Now, what do we mean by punitive damages? Well, gentlemen of the jury, that word, punitive, really defines itself. It is something like a [fol. 1954] definition of reasonable doubt. By punitive damages, we mean such damages as are given as a kind of

punishment to a defendant with a view of preventing similar wrongs in the future. Punitive damages are awarded on the theory that they will deter the defendant from making a like publication and will also deter all other persons similarly situated if they hear about it from making a like publication.

Now, gentlemen of the jury, if after a careful consideration of all the evidence in this case under the rules of law I have just laid down to you and these rules of law you will follow in your deliberations and they will guide you in arriving at whatever verdict you may come to. Now, in case you find for the plaintiff, and you understand that under our system here in America, all twelve of you must agree on the verdict, you will write this kind of verdict if you find for the plaintiff. We, the jury, find in favor of the plaintiff and assess his damages at so many dollars, not exceeding the amount claimed. It may be that you are reasonably satisfied from the evidence here that you ought to have a verdict against the corporate defendant, against The New York Times Company, but not against the four individual defendants. Then, if that is the case, you would render this kind of a verdict. We, the jury, find in favor of the plaintiff against the defendant, The New York Times Company, a corporation, and assess his damages at so many dollars. We further find in favor of the other defendants, Ralph D. Abernathy, Fred L. Shuttlesworth, S. S. Seay, Sr. and J. E. Lowery. On the other hand, if the plaintiff in this case has not reasonably satisfied you from all of the evidence of the truth of the allegations contained in his complaint or of any one count thereof, then the defendant would be entitled to the verdict and you would write this kind of verdict. We, the jury, find for the defendant. You may let any one of your number act as foreman and I am going to let you take all three of these verdicts out with you and you may sign any one you find to be proper under the evidence and under the law, and as I stated, the verdict must be the concurrent action of all twelve of you men sitting on the jury.

The Court: Is the plaintiff satisfied? What says the plaintiff?

[fol. 1955] Mr. Nachman: Satisfied, Your Honor.

The Court: What says the defendants?

Mr. Embry: Will you give us a minute, Your Honor?

The Court: Yes. Now, gentlemen of the jury, a rule of law which is very good and which is applicable in this case that where any of the lawyers for any one of the parties in this case, either the plaintiff or the defendants, that if they have certain ideas of the law and they would like the Court to state their ideas to the jury in their very words and if the Judge thinks that what they suggest is good for, then he gives that to the jury and we call such things written instructions and if the Court thinks they are good, I write my name on here, given, Jones, Judge and then I read them to you and you can take them out and if I think they are bad then I put on here the word, Refused, and give them to the Clerk of the Court and you never see them. Now, at the request of the defendant, The New York Times Company, a corporation, I give you these charges in writing. They do not conflict with anything I have already stated to you. They are correct expositions of the law and are to be taken and considered with what I have already stated to you.

(At this point, the Court reads written charges of The New York Times Company, defendant.)

The Court: Now, gentlemen of the jury, at the request of the individual defendants in this case, I give you these charges in writing.

(At this point, the Court reads written charges of defendants.)

The Court: Now, would it be sufficient to state to the jury that these same identical charges are given in behalf of the other three defendants? Would you prefer the Court to read all of them?

Lawyer Gray: It is perfectly all right, Your Honor, to instruct the jury that each written charge applies to the others.

The Court: Now, gentlemen of the jury, these four writ-[fol. 1956] ten charges that I have just read to you and given you with reference to the defendant, J. E. Lowery,

I give you these same identical charges that I have just read with reference to the defendant, Fred L. Shuttlesworth, with reference to S. S. Seay, Sr. and with reference to Ralph D. Abernathy and you are to consider them the same as if I had gone through and read them with reference to all of them and these charges that I have just read to you at the request of the individual defendant, J. E. Lowery, relate to him and also to each of the other three individual defendants in the case. Now, gentlemen of the jury, you take this case and consider it as fairly and as impartially as you can and do your best under the law and evidence in this case to arrive at a true verdict. What says the plaintiff?

Mr. Nachman: Satisfied, Your Honor.

The Court: What says the defendants?

Mr. MacLeod: If the Court please, the defendant, The New York Times Company, a corporation, excepts to the statement contained in the Court's Oral Charge to the jury wherein the Court stated, "Now the Court is of the opinion and so charges you, gentlemen of the jury, that the matter complained of in Plaintiff's Exhibit No. 347, the advertisement, belongs to a class of defamation called in law, libel per se." The defendant, The New York Times Company, a corporation, further excepts, Your Honor, to the portion of the Court's Oral Charge to the jury wherein the Court stated as follows: "We can say, as part of the law in this case, that a publication is libelous per se when they are such as to degrade the plaintiff in the estimation of his friends and the people of the place where he lives, as injure him in his public office, or impute misconduct in office, want of official integrity, or fidelity to public trust, or such as will subject plaintiff to ridicule or public distrust."

Mr. Embry: Your Honor, we want the Record to note an objection to the interrogatories and the answers thereto being allowed to go into the Jury Room with the jurors as an exhibit.

The Court: All right. I overrule the objection. You may have an exception.

[fol. 1957] Mr. Embry: We except, Your Honor. We except to the oral portions of Your Honor's Charge wherein

Your Honor charged on libel per se. We object to that portion of Your Honor's Charge wherein Your Honor charged as follows: "So, as I said, if you are reasonably satisfied from the evidence before you, considered in connection with the rules of law the Court has stated to you, you would come to consider the question of damages and, where as here, the Court has ruled the matter complained of proved to your reasonable satisfaction and aimed at the plaintiff in this case, is libelous per se then punitive damages may be awarded by the jury even though the amount of actual damages is neither found nor shown."

The Court: Overruled and you have an exception.

Lawyer Gray: Your Honor, we except to the Court's Charge dealing with ratification as well as the Court's Charge in connection with the alleged advertisement being libelous per se in behalf of each of the individual defendants.

The Court: Very well. Overruled. You may have an exception.

Lawyer Gray: We except, Your Honor.

[fol. 1957a]

GIVEN CHARGES REQUESTED BY THE DEFENDANT NEW YORK TIMES

The following written charges were requested by the defendant, The New York Times Company, a Corporation, and given by the Court in writing, viz:.

"6. I charge you, gentlemen of the jury, that after reading the advertisement published in the newspaper of the defendant, The New York Times Company, a corporation, and recalling the testimony in this case that it is your duty to determine whether, in fact, that advertisement published in the defendant, The New York Times Company, a corporation's newspaper intended to and does identify the plaintiff, and I further charge you that the plaintiff in this case has the burden of reasonably satisfying you by a fair preponderance of the evidence that the advertisement does in fact identify him, and if you find from the evidence

that the plaintiff has failed to meet this burden, then I charge you that your verdict must be for the defendant, The New York Times Company, a corporation."

Given, Jones, Judge

"7. I charge you, gentlemen of the jury, that if you find from the evidence that the advertisement complained of by plaintiff relates to a person or persons other than the plaintiff and does not concern plaintiff, then I further charge you your verdict must be for the defendant, The New York Times Company, a corporation."

Given, Jones, Judge

"12. I charge you, gentlemen of the jury, that compensatory damages, if awarded at all, must be fixed at such a figure as the jury dispassionately and according to the evidence in this case finds to be commensurate with the injury actually sustained by the plaintiff."

Given, Jones, Judge

"13. I charge you, gentlemen of the jury, that the right, if any, to recover compensatory damages does not necessarily imply a right to recover substantial damages."

Given, Jones, Judge

"19. I charge you, gentlemen of the jury, that for the purpose of rebutting and repelling the idea of malice, the defendant, The New York Times Company, a corporation, has the right to prove and explain all the facts and cir- [fol.1957b] cumstances surrounding the publication of the advertisement complained of by plaintiff in his complaint."

Given, Jones, Judge

"20. I charge you, gentlemen of the jury, that unless the statements contained in the advertisement of March 29, 1960, published in the newspaper of the defendant, The New York Times Company, a corporation, were directed against the plaintiff, then this advertisement does not afford

plaintiff a basis for recovery in this case against the defendant, The New York Times Company, a corporation."

Given, Jones, Judge

"21. I charge you, gentlemen of the jury, if you believe from the evidence that the advertisement of March 29, 1960 was directed at others than the plaintiff and not at the plaintiff, then such advertisement cannot afford the plaintiff a basis of recovery in this case."

Given, Jones, Judge

"29. I charge you, gentlemen of the jury, that should you reach the point in your deliberation as to the assessment of punitive damages, if you have found that the advertisement published by the defendant New York Times Company and complained of by the plaintiff was of and concerning the plaintiff and was libelous, then you must consider in mitigation of such damages all the circumstances under which the advertisement was published which have been given in evidence."

Given, Jones, Judge

"30. I charge you, gentlemen of the jury, that in this case the defendant has entered a plea of the general issue; that is to say that the burden of proof in the first instance is on the plaintiff to show to your reasonable satisfaction by a preponderance of the evidence that the advertisement printed by the defendant New York Times Company was published by the defendant New York Times Company of and concerning the plaintiff. If you find from the evidence that the advertisement was not published of and concerning the plaintiff, then your verdict must be for the defendant New York Times Company."

Given, Jones, Judge

"31. I charge you, gentlemen of the jury, that should you reach the point in your deliberation as to the assessment of compensatory or actual damages, if you have found that [fol. 1957c] the advertisement published by the defendant New York Times Company and complained of by the

plaintiff was of and concerning the plaintiff and was libelous, then the burden is on the plaintiff to prove to your reasonable satisfaction by a preponderance of the evidence the items of actual or compensatory damage that he claims to have suffered, and you are further instructed that this amount may be nominal."

Given, Jones, Judge

"32. I charge you, gentlemen of the jury, that the burden is on the plaintiff to prove to your satisfaction by a fair preponderance of the evidence that the advertisement complained of by the plaintiff was published by the New York Times Company of and concerning him."

Given, Jones, Judge

"33. I charge you, gentlemen of the jury, that the burden is on the plaintiff to prove to your satisfaction by a fair preponderance of the evidence that the advertisement complained of by the plaintiff as published by the New York Times Company referred to some ascertained or ascertainable person and that person must be the plaintiff."

Given, Jones, Judge

"34. I charge you, gentlemen of the jury, that you must be reasonably satisfied from the evidence that the adverment complained of by the plaintiff was published by the New York Times Company with reference to and concerning the plaintiff."

Given, Jones, Judge

"37. I charge you, gentlemen of the jury, that before the plaintiff can recover in this case, he must reasonably satisfy you from the evidence that the advertisement published by the New York Times Company and complained of in his complaint definitely and specifically referred to and concerned him."

Given, Jones, Judge

"38. I charge you, gentlemen of the jury, that before the plaintiff can recover in this case, he must reasonably

satisfy you from the evidence that the advertisement published by the New York Times Company and complained of in his complaint with a reasonable degree of certainty referred to and concerned the plaintiff."

Given, Jones, Judge

"39. I charge you, gentlemen of the jury, that should [fol. 1957d] you reach the point in your deliberations as to the assessment of compensatory damages, then you cannot consider in such assessment of damages any repetitions of the advertisement complained of by the plaintiff unless you are reasonably satisfied from the evidence that such repetition was done at the instance of the defendant New York Times Company."

Given, Jones, Judge

"40. I charge you, gentlemen of the jury, that as a matter of law no cause of action for libel can be predicated upon a publication of the alleged libel which has been induced, procured or consented to by the plaintiff. Therefore if you believe from all the evidence, that the testimony of any witness was based upon his reading of the advertisement complained of here, only after having been shown a copy of same by the plaintiff or his attorneys, you must disregard that testimony entirely."

Given, Jones, Judge

"41. I charge you, gentlemen of the jury, that should you reach the point in your deliberations as to the assessment of punitive damages; then you cannot consider in such assessment of punitive damages any repetitions by others of the advertisement complained of by the plaintiff unless you are reasonably satisfied from the evidence that such repetition was done at the instance of the defendant New York Times Company."

Given, Jones, Judge

"42. I charge you, gentlemen of the jury, that should you reach the point in your deliberations as to the assessment of punitive damages, then you cannot consider in

such assessment of punitive damages any repetitions of the advertisement complained of by the plaintiff unless you are reasonably satisfied from the evidence that such repetition was done at the instance of the defendant New York Times Company, a corporation."

Given, Jones, Judge

"43. I charge you, gentlemen of the jury, that should you reach the point in your deliberations as to the assessment of compensatory damages, then you cannot consider in such assessment of damages any repetitions by others of the advertisement complained of by the plaintiff unless you are reasonably satisfied from the evidence that such repetition was done at the instance of the defendant New York York Times Company, a corporation."

Given, Jones, Judge

"44. I charge you, gentlemen of the jury, that if you [fol. 1957e] believe from all the evidence that the words contained in the advertisement complained of are so vague and uncertain that they could not have been intended to refer to any particular person then your verdict must be in favor of the defendant, The New York Times Company, a corporation."

Given, Jones, Judge

"45. I charge you, gentlemen of the jury, that in this case, the defendant New York Times Company has entered a plea of the general issue; that is to say that the defendant New York Times Company has denied that the advertisement complained of by the plaintiff in his complaint was published of and concerning him, and therefore the plaintiff must prove to your reasonable satisfaction and by a preponderance of all the evidence that the advertisement complained of by the plaintiff was published of and concerning him."

Given, Jones, Judge

"51. I charge you, gentlemen of the jury, that before the plaintiff is entitled to a verdict under count two of

the complaint, the burden is on the plaintiff to reasonably satisfy you from the evidence of the truth of every material allegation contained in count two of the complaint."

Given, Jones, Judge

"52. I charge you, gentlemen of the jury, that before the plaintiff is entitled to a verdict under count one of the complaint, the burden is on the plaintiff to reasonably satisfy you from the evidence of the truth of every material allegation contained in count one of the complaint."

Given, Jones, Judge

"53. I charge you, gentlemen of the jury, that you are not bound to accept the opinion of any witness who has testified in this case, but if any witness has testified to his opinion on any material issue in this case you may give his testimony such weight and credence as you see fit when taken in connection with all the facts and circumstances as shown by all the evidence in the case."

Given, Jones, Judge

"54. I charge you, gentlemen of the jury, that there has been evidence in the nature of opinion evidence introduced by the plaintiff on the issue of whether or not the statements in the advertisement complained of were written of and concerning the plaintiff and I further charge you that you are not bound to accept the opinion of any witness but you may give that evidence such weight and credence [fol. 1957f] as you see fit when taken in connection with all the facts and circumstances as shown by all the evidence in the case."

Given, Jones, Judge

"56. I charge you gentlemen of the jury, that L. B. Sullivan is the only plaintiff in this case and you may not return a verdict in favor of L. B. Sullivan unless you find from all the evidence that the statements contained in the advertisement complained of, referred to L. B. Sullivan."

Given, Jones, Judge

"57. I charge you, gentlemen of the jury, that mere negligence or carelessness is not evidence of actual malice or malice in fact, and does not justify an award of exemplary or punitive damages in an action for libel."

Given, Jones, Judge

"58. I charge you, gentlemen of the jury, that even though you should find from the evidence that the article in question is libelous and that it was published by the defendant, The New York Times Company, a corporation, with an intent to defame the plaintiff, you are instructed that it does not follow as a matter of law that plaintiff should be allowed anything by way of punitive or exemplary damages; for the granting of punitive or exemplary damages is, even though you find an intent to defame, within the discretion of the jury; and you are further instructed that even on the clearest proof of malice in fact, it is still your exclusive province to say whether or not punitive or exemplary damages shall be awarded; for plaintiff is entitled to punitive damages only when the jury shall, after having found that the article in question was published with an intent to defame the plaintiff, conclude in the exercise of its discretion that such damages ought to be allowed."

Given, Jones, Judge

"61. I charge you, gentlemen of the jury, that if you are reasonably satisfied from all the evidence that damages should be awarded to the plaintiff you may in fixing the amount of such damages consider the fact that only 35 copies of the defendant New York Times, a corporation's newspaper, are distributed daily in Montgomery County."

Given, Jones, Judge

[fol. 1957g]

GIVEN CHARGES REQUESTED BY THE DEFENDANT RALPH D. ABERNATHY

The following written charges were requested by the defendant, Ralph D. Abernathy, and given by the Court in writing, viz:

"7. I charge you, gentlemen of the jury, that if you do not find that Rev. Ralph D. Abernathy was responsible for the publication of the advertisement which appeared in the New York Times, dated, Tuesday, March 29, 1960, you must find a verdict in favor of him."

Given, Jones, Judge

"10. I charge you, gentlemen of the jury, that the burden is on the Plaintiff to prove that the words were published as averred in the complaint and that the Defendant, Ralph D. Abernathy, was responsible for the publication thereof, and if you find from the evidence that said defendant was not responsible for the publication of the matter as alleged in the Complaint, then you must return a verdict for the said Defendant."

Given, Jones, Judge

"15. I charge you, gentlemen of the jury, that the burden of proof is upon the Plaintiff to reasonably satisfy you from the evidence in this case that the Defendant, Ralph D. Abernathy, did in fact publish the advertisement which appeared in the March 29, 1960 issue of the New York Times, and unless from the evidence you are convinced that said Defendant in fact published said advertisement, you must return a verdict for the said defendant."

Given, Jones, Judge

"21. I charge you, gentlemen of the jury, that the burden is on the Plaintiff to prove that the words were published as averred in the complaint and that the defendant, Ralph D. Abernathy, was responsible for the publication thereof, and unless on the evidence you are convinced that said defendant was responsible for the publication of the matter

as alleged in the complaint, then you must return a verdict for the said defendant."

Given, Jones, Judge

[fol. 1957h]

GIVEN CHARGES REQUESTED BY THE DEFENDANT J. E. LOWERY

The following written charges were requested by the defendant, J. E. Lowery, and given by the Court in writing, viz:

"7. I charge you, gentlemen of the jury, that if you do not find that Rev. J. E. Lowery was responsible for the publication of the advertisement which appeared in the New York Times, dated, Tuesday, March 29, 1960, you must find a verdict in favor of him."

Given, Jones, Judge

"10. I charge you, gentlemen of the jury, that the burden is on the Plaintiff to prove that the words were published as averred in the complaint and that the Defendant, J. E. Lowery, was responsible for the publication thereof, and if you find from the evidence that said Defendant was not responsible for the publication of the matter as alleged in the Complaint, then you must return a verdict for the said Defendant."

Given, Jones, Judge

"15. I charge you, gentlemen of the jury, that the burden of proof is upon the Plaintiff to reasonable satisfy you from the evidence in this case that the Defendant, J. E. Lowery, did in fact publish the advertisement which appeared in the March 29, 1960 issue of the New York Times, and unless from the evidence you are convinced that said Defendant in fact published said advertisement, you must return a verdict for the said Defendant."

Given, Jones, Judge

"21. I charge you, gentlemen of the jury, that the burden is on the Plaintiff to prove that the words were published as averred in the complaint and that the defendant, J. E.

Lowery, was responsible for the publication thereof, and unless on the evidence you are convinced that said defendant was responsible for the publication of the matter as alleged in the complaint, then you must return a verdict for the said defendant."

Given, Jones, Judge

[fol. 1957i]

GIVEN CHARGES REQUESTED BY THE DEFENDANT S. S. SEAY, SR.

The following written charges were requested by the defendant, S. S. Seay, Sr., and given by the Court in writing, viz:

"7. I charge you, gentlemen of the jury, that if you do not find that Rev. S. S. Seay, Sr. was responsible for the publication of the advertisement which appeared in the New York Times, dated, Tuesday, March 29, 1960, you must find a verdict in favor of him."

Given, Jones, Judge

"10. I charge you, gentlemen of the jury, that the burden is on the plaintiff to prove that the words were published as averred in the complaint and that the Defendant, S. S. Seay, Sr., was responsible for the publication thereof, and if you find from the evidence that said Defendant was not responsible for the publication of the matter as alleged in the Complaint, then you must return a verdict for the said Defendant."

Given, Jones, Judge

"15. I charge you, gentlemen of the jury, that the burden of proof is upon the Plaintiff to reasonably satisfy you from the evidence in this case that the Defendant, S. S. Seay, Sr., did in fact publish the advertisement which appeared in the March 29, 1960 issue of the New York Times, and unless from the evidence you are convinced that said Defendant in fact published said advertisement, you must return a verdict for the said Defendant."

Given, Jones, Judge

"21. I charge you, gentlemen of the jury, that the burden is on the Plaintiff to prove that the words were published as averred in the complaint and that the defendant, S. S. Seay, Sr., was responsible for the publication thereof, and unless on the evidence you are convinced that said defendant was responsible for the publication of the matter as alleged in the complaint, then you must return a verdict for the said defendant."

Given, Jones, Judge

[fol. 1957j]

GIVEN CHARGES REQUESTED BY THE DEFENDANT FRED L. SHUTTLESWORTH

The following written charges were requested by the defendant, Fred L. Shuttlesworth, and given by the Court in writing, viz:

"7. I charge you, gentlemen of the jury, that if you do not find that Rev. Fred L. Shuttlesworth was responsible for the publication of the advertisement which appeared in the New York Times, dated Tuesday, March 29, 1960, you must find a verdict in favor of him."

Given, Jones, Judge

"10. I charge you, gentlemen of the jury, that the burden is on the Plaintiff to prove that the words were published as averred in the complaint and that the Defendant, Fred L. Shuttlesworth, was responsible for the publication thereof, and if you find from the evidence that said Defendant was not responsible for the publication of the matter as alleged in the Complaint, then you must return a verdict for the said Defendant."

Given, Jones, Judge

"15. I charge you, gentlemen of the jury, that the burden of proof is upon the Plaintiff to reasonably satisfy you from the evidence in this case that the Defendant, Fred L. Shuttlesworth, did in fact publish the advertisement which appeared in the March 29, 1960 issue of the New York Times, and unless from the evidence you are convinced that

said Defendant in fact published said advertisement you must return a verdict for the said Defendant."

Given, Jones, Judge

"21. I charge you, gentlemen of the jury, that the burden is on the Plaintiff to prove that the words were published as averred in the complaint and that the defendant, Fred L. Shuttlesworth, was responsible for the publication thereof, and unless on the evidence you are convinced that said defendant was responsible for the publication of the matter as alleged in the complaint, then you must return a verdict for the said defendant."

Given, Jones, Judge

[fol. 1957k]

REFUSED CHARGES REQUESTED BY THE DEFENDANT NEW YORK TIMES

The following written charges were requested by the defendant, The New York Times Company, a Corporation, and refused by the Court in writing, viz:

"1. I charge you, gentlemen of the jury, that the advertisement complained of in plaintiff's complaint is not libelous per se, that is to say, the same is not libelous as a matter of law."

Refused, Jones, Judge

"2. I charge you, gentlemen of the jury, that the advertisement complained of in plaintiff's complaint is not libelous as a matter of law, and if, after reading that advertisement, you find that it was not degrading, and would not tend to injure the plaintiff's reputation, then I further charge you that such advertisement is not in fact libelous and in that event your verdict must be for the defendant, The New York Times Company, a corporation."

Refused, Jones, Judge

"3. I charge you, gentlemen of the jury, that if you are reasonably satisfied from the evidence that the publication complained of by plaintiff in his complaint is false, then I

further charge you that not every false publication is libelous as a matter of law, and that to make such publication libelous you must further find from the evidence that by reading such publication and giving to the words contained therein their natural and ordinary meaning, that the same is degrading, and would tend to injure the plaintiff's reputation by imputing to him some incapacity or lack of due qualification to fill the public office held by plaintiff or by imputing to him some positive past misconduct which injuriously affects him in his public office or the holding of principles which are hostile to the maintenance of government."

Refused, Jones, Judge

"4. I charge you, gentlemen of the jury, that if you are reasonably satisfied from the evidence that the publication complained of by plaintiff in his complaint is false, then I further charge you that not every false publication is libelous as a matter of law, and that to make such publication libelous you must further find from the evidence that by reading such publication and giving to the words contained therein their natural and ordinary meaning, that the same is degrading and would tend to injure the plaintiff's reputa- [fol. 1957 l] tion by imputing gross negligence, dishonesty or other impropriety in the discharge of his official duties."

Refused, Jones, Judge

"5. I charge you, gentlemen of the jury, that in determining whether the advertisement complained of in plaintiff's complaint was libelous per se or libelous as a matter of law, you must find from the evidence that damage to plaintiff's reputation would follow as a natural and probable result of the publication of said advertisement, and in this connection it must be kept in mind that the damages claimed and with which you, the jury, are primarily concerned is injury to the reputation; and I further charge you that in the absence of such injury, even if you find from the evidence that the advertisement caused plaintiff notoriety and embarrassment, your verdict must be for the defendant, The New York Times Company, a corporation."

Refused, Jones, Judge

"8. I charge you, gentlemen of the jury, that there is no evidence in this case that plaintiff has sustained any substantial damage, and I further charge you that in the event you find the issues in favor of the plaintiff, your verdict should be for nominal damages only."

Refused, Jones, Judge

"9. I charge you, gentlemen of the jury, that if, in your consideration of this case under the evidence, you arrive at a consideration of whether or not the plaintiff is entitled to compensatory damages, then I further charge you that under the law your award for such compensatory damages should be such damages as you find from the evidence were directly and proximately caused to the plaintiff by the publication of the advertisement sued upon insofar as such advertisement related to the plaintiff."

Refused, Jones, Judge

"10. I charge you, gentlemen of the jury, if you find from the evidence that the advertisement complained of in plaintiff's complaint concerned the plaintiff, and if you further find from the evidence that such advertisement injured the plaintiff's feelings, but did not and could not injure his reputation, then I charge you that your verdict must be for the defendant, The New York Times Company, a corporation."

Refused, Jones, Judge

"11. I charge you, gentlemen of the jury, that before you are authorized to award substantial compensatory damages [fol. 1957m] to the plaintiff, you must find from the evidence in this case that the plaintiff suffered substantial injury as a result of the publication by the defendant, The New York Times Company, a corporation, of the advertisement complained of by plaintiff in his complaint."

Refused, Jones, Judge

"15. I charge you, gentlemen of the jury, if you find from all the evidence that the advertisement complained of by the plaintiff was libelous per se but that plaintiff has sus-

tained no actual injury, then I charge you that your verdict may be for nominal damages."

Refused, Jones, Judge

"16. I charge you, gentlemen of the jury, if you should find from all the evidence that the advertisement complained of by plaintiff was libelous per se but that plaintiff has sustained no actual injury in his office, profession, trade or business by reason of the publication of the advertisement complained of in plaintiff's complaint, then I further charge you that your verdict may be for nominal damages."

Refused, Jones, Judge

"18. I charge you, gentlemen of the jury, that punitive damages, as the name indicates, are designed to punish the defendant, the New York Times Company, a corporation, and the other defendants in this case, for the publication of the advertisement complained of, and I further charge you that such punitive damages may be awarded only in the event that you, the jury, are convinced by a fair preponderance of the evidence that the defendant, the New York Times Company, a corporation, in publishing the matter complained of was motivated by personal ill will, that is actual intent to do the plaintiff harm, or that the defendant, The New York Times Company, a corporation, was guilty of gross negligence and recklessness and not of just ordinary negligence or carelessness in publishing the matter complained of so as to indicate a wanton disregard of plaintiff's rights."

Refused, Jones, Judge

"22. I charge you, gentlemen of the jury, that if you believe the evidence in this case, you cannot find a verdict in favor of the plaintiff and against the defendant, The New York Times Company, a corporation."

Refused, Jones, Judge

"23. I charge you, gentlemen of the jury, that if you believe the evidence in this case you cannot find a verdict in [fol. 1957n] favor of the plaintiff and against the defendant,

The New York Times Company, a corporation, in this case under Count One of plaintiff's complaint."

Refused, Jones, Judge

"24. I charge you, gentlemen of the jury, that if you believe the evidence in this case you cannot find a verdict in favor of the plaintiff and against the defendant, The New York Times Company, a corporation, in this case under Count One of plaintiff's complaint as last amended."

Refused, Jones, Judge

"25. I charge you, gentlemen of the jury, that if you believe the evidence in this case you cannot find a verdict in favor of the plaintiff and against the defendant, The New York Times Company, a corporation, in this case under Count Two of plaintiff's complaint."

Refused, Jones, Judge

"26. I charge you, gentlemen of the jury, that if you believe the evidence in this case your verdict must be for the defendant, The New York Times Company, a corporation."

Refused, Jones, Judge

"27. I charge you, gentlemen of the jury, if you believe the evidence in this case your verdict must be for the defendant, The New York Times Company, a corporation, under Count One of the complaint."

Refused, Jones, Judge

"28. I charge you, gentlemen of the jury, if you believe the evidence in this case your verdict must be for the defendant, The New York Times Company, a corporation, under Count Two of the complaint."

Refused, Jones, Judge

"35. I charge you, gentlemen of the jury, that there is no evidence in this case from which it appears that the plaintiff was referred to in the advertisement published by defendant New York Times Company and therefore your

verdict must be for the defendant New York Times Company."

Refused, Jones, Judge

"36. I charge you, gentlemen of the jury, that the words complained of by the plaintiff in his complaint in the advertisement published by the defendant New York Times Company in its newspaper must be considered in connection with the facts and circumstances in reference to which the words were used; and I further charge you that these facts and circumstances may take from the words any import of reflection on the ability and integrity of the plaintiff in his [fol. 1957o] office, trade, business, or profession, in which case the words used in the advertisement complained of would not be libelous."

Refused, Jones, Judge

"46. I charge you, gentlemen of the jury, that if you believe the evidence you cannot return a verdict in favor of the plaintiff and against the defendant, the New York Times Company, a corporation, for compensatory damages."

Refused, Jones, Judge

"47. I charge you, gentlemen of the jury, that there has been no evidence introduced of any actual damage to the plaintiff."

Refused, Jones, Judge

"48. I charge you, gentlemen of the jury, that there has been no evidence introduced upon which a verdict for compensatory damages could be based."

Refused, Jones, Judge

"59. I charge you, gentlemen of the jury, that if you return a verdict for the plaintiff and assess damages against one or more of the defendants, you must specify in your verdict what part of the damages are compensatory and what part of the damages are punitive as to each defendant against whom a verdict is returned."

Refused, Jones, Judge

"60. I charge you, gentlemen of the jury, that if you believe from all the evidence in this case that the plaintiff is entitled to recover damages against one or more of the defendants in this case you may in your discretion, put your verdict as to such damages, if any, in the form of special findings; that is to say you may assess any punitive or compensatory damages separately, indicating in what amount each kind of damage is found and as to which defendant, if any, it is so found."

Refused, Jones, Judge

"63. I charge you, gentlemen of the jury, that if you find from all the evidence that the plaintiff is entitled to punitive damages from one or more of the defendants but not from one or more of the other defendants you must return a verdict in favor of all the defendants."

Refused, Jones, Judge

[fol. 1957p]

REFUSED CHARGES REQUESTED BY THE DEFENDANT RALPH D. ABERNATHY

The following written charges were requested by the defendant, Ralph D. Abernathy, and refused by the Court in writing, viz:

"1. I charge you gentlemen of the jury, to find a verdict in favor of the Defendant, Ralph D. Abernathy."

Refused, Jones, Judge

"2. I charge you, gentlemen of the jury, that if you find that the Defendant, Ralph D. Abernathy, did not authorize the publication of the article in question which appeared in the New York Times on Tuesday, March 29, 1960, you must find a verdict in favor of him."

Refused, Jones, Judge

"3. I charge you, gentlemen of the jury, that if you find that the Defendant, Ralph D. Abernathy, did not consent to the publication of the article in question which appeared

in the New York Times on Tuesday, March 29, 1960, you must find a verdict in favor of him."

Refused, Jones, Judge

"4. I charge you, gentlemen of the jury, that if you find that the Defendant, Ralph D. Abernathy, did not publish or cause to be published the article in question which appeared in the New York Times on Tuesday, March 29, 1960, you must find a verdict in favor of him."

Refused, Jones, Judge

"5. I charge you, gentlemen of the jury, that if you find that the Defendant, Ralph D. Abernathy, did not authorize anyone to publish on his behalf the article in question which appeared in the New York Times on Tuesday, March 29, 1960, you must find a verdict for him."

Refused, Jones, Judge

"6. I charge you, gentlemen of the jury, that if from the evidence you find that the Defendant, Ralph D. Abernathy, did not, either directly or through some other person authorized to act for him, publish or consent to the publication of the statements complained of in the New York Times on Tuesday, March 29, 1960, you must find a verdict in favor of him."

Refused, Jones, Judge

"8. I charge you, gentlemen of the jury, that unless from the evidence you are convinced that the Defendant, Ralph [fol. 1957q] D. Abernathy was the author or the publisher of the advertisement which appeared in the New York Times (the subject matter of this suit) on Tuesday, March 29, 1960, you must return a verdict for said Defendant."

Refused, Jones, Judge

"9. I charge you, gentlemen of the jury, to constitute a libel, there must be a publication as well as a writing, and if the publication was made without the consent of the Defendant, Ralph D. Abernathy, the offense is not complete as to him and you must return a verdict in favor of him."

Refused, Jones, Judge

"11. I charge you, gentlemen of the jury, that if you find from the evidence that the Defendant, Ralph D. Abernathy, had no knowledge of the writing or publication of the advertisement, prior to publication, that appeared in the New York Times, dated, Tuesday, March 29, 1960, you must return a verdict for the said Defendant."

Refused, Jones, Judge

"12. I charge you, gentlemen of the jury, that the burden of proof is upon the Plaintiff to reasonably satisfy you from the evidence in this case that the Defendant, Ralph D. Abernathy directly, or indirectly, or through some other person authorized to act for him, published or consented to the publication of the statements complained of which appeared in the New York Times on March 29, 1960, and unless from the evidence you are convinced that said Defendant did directly or indirectly or through some other person authorized to act for him, published or consented to the publication of said statements, then you must return a verdict for the defendant, Ralph D. Abernathy."

Refused, Jones, Judge

"13. I charge you, gentlemen of the jury, that if you believe from the evidence that the Defendant Ralph D. Abernathy, did Not authorize the use of his name in connection with the publication of the advertisement which appeared in the New York Times on March 29, 1960, you must return a verdict for said Defendant."

Refused, Jones, Judge

"14. Gentlemen of the jury, if you believe from the evidence that the Defendant, Ralph D. Abernathy, did not consent to the use of his name in connection with the publication of the advertisement which appeared in the New [fol. 1957r] York Times on March 29, 1960, you must return a verdict for said Defendant."

Refused, Jones, Judge

"16. I charge you, gentlemen of the jury, if from the evidence you believe that the defendant Ralph D. Abernathy

did not publish or cause to be published the alleged libelous matter contained in the advertisement which appeared in the New York Times on March 29, 1960, then, as a matter of law, there was no legal obligation on the part of this defendant to reply to the letter written by the plaintiff to this defendant demanding a retraction of the alleged libelous matters, and you must return a verdict for said defendant."

Refused, Jones, Judge

"17. I charge you, gentlemen of the jury, that if from the evidence you believe that the defendant never authorised any one to affix his name to the advertisement which is the subject matter of this suit, and if you further believe from the evidence that the Plaintiff wrote a letter to the Defendant demanding a retraction of certain alleged libelous matter contained in said advertisement, and if you further believe from the evidence that the Defendant did not reply to the plaintiff's letter, I charge you as a matter of law that the Defendant's failure to reply to Plaintiff's letter cannot be considered by you as an admission that he published the alleged libelous matter; under such circumstances the law does not require the Defendant to reply to Plaintiff's letter, and you must return a verdict for the Defendant Ralph D. Abernathy."

Refused, Jones, Judge

"18. Gentlemen of the jury, if you believe the evidence in this case, you must return a verdict for the defendant Ralph D. Abernathy."

Refused, Jones, Judge

"19. Gentlemen of the jury, unless from the evidence you are convinced that the defendant Ralph D. Abernathy consented to the use of his name in connection with the publication of the advertisement complained of, you must find for said defendant."

Refused, Jones, Judge

"20. I charge you gentlemen of the jury, that unless on the evidence you are convinced that the defendant Ralph

D. Abernathy had knowledge of the writing or publication of the advertisement complained of, prior to publication in the New York Times, dated Tuesday, March 29, 1960, you must find for the defendant."

Refused, Jones, Judge

[fol. 1957s]

REFUSED CHARGES REQUESTED BY THE DEFENDANT REV. J. E. LOWERY

The following written charges were requested by the defendant, J. E. Lowery, and refused by the Court in writing, viz:

"1. I charge you gentlemen of the jury, to find a verdict in favor of the Defendant, Rev. J. E. Lowery."

Refused, Jones, Judge

"2. I charge you, gentlemen of the jury, that if you find that the Defendant, J. E. Lowery, did not authorize the publication of the article in question which appeared in the New York Times on Tuesday, March 29, 1960, you must find a verdict in favor of him."

Refused, Jones, Judge

"3. I charge you, gentlemen of the jury, that if you find that the Defendant, J. E. Lowery, did not consent to the publication of the article in question which appeared in the New York Times on Tuesday, March 29, 1960, you must find a verdict in favor of him."

Refused, Jones, Judge

"4. I charge you, gentlemen of the jury, that if you find that the Defendant, J. E. Lowery, did not publish or cause to be published the article in question which appeared in the New York Times on Tuesday, March 29, 1960, you must find a verdict in favor of him."

Refused, Jones, Judge

"5. I charge you, gentlemen of the jury, that if you find that the Defendant, J. E. Lowery, did not authorize anyone

to publish on his behalf the article in question which appeared in the New York Times on Tuesday, March 29, 1960, you must find a verdict in favor of him."

Refused, Jones, Judge

"6. I charge you, gentlemen of the jury, that if from the evidence you find that the Defendant, J. E. Lowery, did not, either directly or through some other person authorized to act for him, publish or consent to the publication of the statements complained of which appeared in the New York Times on Tuesday, March 29, 1960, you must find a verdict in favor of him."

Refused, Jones, Judge

[fol. 1957t] "8. I charge you, gentlemen of the jury, that unless from the evidence you are convinced that the Defendant, J. E. Lowery, was the author or the publisher of the advertisement which appeared in the New York Times (the subject matter of this suit) on Tuesday, March 29, 1960, you must return a verdict for said Defendant."

Refused, Jones, Judge

"9. I charge you, gentlemen of the jury, to constitute a libel, there must be a publication as well as a writing, and if the publication was made without the consent of the Defendant, J. E. Lowery, the offense is not complete as to him and you must return a verdict in favor of him."

Refused, Jones, Judge

"11. I charge you, gentlemen of the jury, that if you find from the evidence that the Defendant, J. E. Lowery, had no knowledge of the writing or publication of the advertisement, prior to publication, that appeared in the New York Times, dated, Tuesday, March 29, 1960, you must return a verdict for the said Defendant."

Refused, Jones, Judge

"12. I charge you, gentlemen of the jury, that the burden of proof is upon the Plaintiff to reasonably satisfy you from the evidence in this case that the Defendant J. E.

Lowery directly, or indirectly, or through some other person authorized to act for him, published or consented to the publication of said statements, then you must return a verdict for the defendant J. E. Lowery."

Refused, Jones, Judge

"13. I charge you, gentlemen of the jury, that if you believe from the evidence that the Defendant J. E. Lowery, did NOT authorize the use of his name in connection with the publication of the advertisement which appeared in the New York Times on March 29, 1960, you must return a verdict for said Defendant."

Refused, Jones, Judge

"14. Gentlemen of the jury, if you believe from the evidence that the Defendant, J. E. Lowery, did not consent to the use of his name in connection with the publication of the advertisement which appeared in the New York Times on March 29, 1960, you must return a verdict for said Defendant."

Refused, Jones, Judge

[fol. 1957u] "16. I charge you, gentlemen of the jury, if from the evidence you believe that the defendant J. E. Lowery did not publish or cause to be published the alleged libelous matter contained in the advertisement which appeared in the New York Times on March 29, 1960, then, as a matter of law, there was no legal obligation on the part of this defendant to reply to the letter written by the plaintiff to this defendant demanding a retraction of the alleged libelous matters, and you must return a verdict for said defendant."

Refused, Jones, Judge

"17. I charge you, gentlemen of the jury, that if from the evidence you believe that the defendant never authorized any one to affix his name to the advertisement which is the subject matter of this suit, and if you further believe from the evidence that the Plaintiff wrote a letter to the Defendant demanding a retraction of certain alleged libelous matter contained in said advertisement, and if you further

believe from the evidence that the Defendant did not reply to the Plaintiff's letter, I charge you as a matter of law that the Defendant's failure to reply to Plaintiff's letter cannot be considered by you as an admission that he published the alleged libelous matter; under such circumstances the law does not require the Defendant to reply to Plaintiff's letter, and you must return a verdict for the Defendant J. E. Lowery."

Refused, Jones, Judge

"18. Gentlemen of the jury, if you believe the evidence in this case, you must return a verdict for the defendant J. E. Lowery."

Refused, Jones, Judge

"19. Gentlemen of the jury, unless from the evidence you are convinced that the defendant J. E. Lowery consented to the use of his name in connection with the publication of the advertisement complained of, you must find for said defendant."

Refused, Jones, Judge

"20. I charge you gentlemen of the jury, that unless on the evidence you are convinced that the defendant J. E. Lowery had knowledge of the writing or publication of the advertisement complained of, prior to publication in the New York Times, dated Tuesday, March 29, 1960, you must find for the defendant."

Refused, Jones, Judge

[fol. 1957v]

REFUSED CHARGES REQUESTED BY THE DEFENDANT S. S. SEAY, SR.

The following written charges were requested by the defendant, S. S. Seay, Sr., and refused by the Court in writing, viz:

"1. I charge you, gentlemen of the jury, to find a verdict in favor of the Defendant, S. S. Seay, Sr."

Refused, Jones, Judge

"2. I charge you, gentlemen of the jury, that if you find that the Defendant, S. S. Seay, Sr., did not authorize the publication of the article in question which appeared in the New York Times on Tuesday, March 29, 1960, you must find a verdict in favor of him."

Refused, Jones, Judge

"3. I charge you, gentlemen of the jury, that if you find that the Defendant, S. S. Seay, Sr., did not consent to the publication to the article in question which appeared in the New York Times on Tuesday, March 29, 1960, you must find a verdict in favor of him."

Refused, Jones, Judge

"4. I charge you, gentlemen of the jury, that if you find that the Defendant, S. S. Seay, Sr., did not publish or cause to be published the article in question which appeared in the New York Times on Tuesday, March 29, 1960, you must find a verdict in favor of him."

Refused, Jones, Judge

"5. I charge you, gentlemen of the jury, that if you find that the Defendant, S. S. Seay, Sr., did not authorize anyone to publish on his behalf the article in question which appeared in the New York Times on Tuesday, March 29, 1960, you must find a verdict in favor of him."

Refused, Jones, Judge

"6. I charge you, gentlemen of the jury, that if from the evidence you find that the Defendant, S. S. Seay, Sr., did not, either directly or through some other person authorized to act for him, publish or consent to the publication of the statements complained of which appeared in the New York Times on Tuesday, March 29, 1960, you must find a verdict in favor of him."

Refused, Jones, Judge

"8. I charge you, gentlemen of the jury, that unless from the evidence you are convinced that the Defendant, S. S. [fol. 1957w] Seay, Sr., was the author or the publisher of

the advertisement which appeared in the New York Times (the subject matter of this suit) on Tuesday, March 29, 1960, you must return a verdict for said Defendant."

Refused, Jones, Judge

"9. I charge you, gentlemen of the jury, to constitute a libel, there must be a publication as well as a writing, and if the publication was made without the consent of the Defendant, S. S. Seay, Sr., the offense is not complete as to him and you must return a verdict in favor of him."

Refused, Jones, Judge

"11. I charge you, gentlemen of the jury, that if you find from the evidence that the Defendant, S. S. Seay, Sr., had no knowledge of the writing or publication of the advertisement, prior to publication, that appeared in the New York Times, dated, Tuesday, March 29, 1960, you must return a verdict for the said Defendant."

Refused, Jones, Judge

"12. I charge you, gentlemen of the jury, that the burden of proof is upon the Plaintiff to reasonably satisfy you from the evidence in this case that the Defendant, S. S. Seay, Sr., directly, or indirectly, or through some other person authorized to act for him, published or consented to the publication of the statements complained of which appeared in the New York Times on March 29, 1960, and unless from the evidence you are convinced that said Defendant did directly or indirectly or through some other person authorized to act for him, published or consented to the publication of said statements, then you must return a verdict for the defendant, S. S. Seay, Sr."

Refused, Jones, Judge

"13. I charge you, gentlemen of the jury, that if you believe from the evidence that the Defendant S. S. Seay, Sr., did Not authorize the use of his name in connection with the publication of the advertisement which appeared

in the New York Times on March 29, 1960, you must return a verdict for said Defendant."

Refused, Jones, Judge

"14. Gentlemen of the jury, if you believe from the evidence that the Defendant, S. S. Seay, Sr., did not consent to the use of his name in connection with the publication of the advertisement which appeared in the New York Times on March 29, 1960, you must return a verdict for said Defendant."

Refused, Jones, Judge

[fol. 1957x] "16. I charge you, gentlemen of the jury, if from the evidence you believe that the defendant S. S. Seay, Sr. did not publish or cause to be published the alleged libelous matter contained in the advertisement which appeared in the New York Times on March 29, 1960, then, as a matter of law, there was no legal obligation on the part of this defendant to reply to the letter written by the plaintiff to this defendant demanding a retraction of the alleged libelous matters, and you must return a verdict for said defendant."

Refused, Jones, Judge

"17. I charge you, gentlemen of the jury, that if from the evidence you believe that the defendant never authorized any one to affix his name to the advertisement which is the subject matter of this suit, and if you further believe from the evidence that the Plaintiff wrote a letter to the Defendant demanding a retraction of certain alleged libelous matter contained in said advertisement, and if you further believe from the evidence that the Defendant did not reply to the Plaintiff's letter, I charge you as a matter of law that the Defendant's failure to reply to Plaintiff's letter cannot be considered by you as an admission that he published the alleged libelous matter; under such circumstances the law does not require the Defendant to reply to Plaintiff's letter, and you must return a verdict for the Defendant S. S. Seay, Sr."

Refused, Jones, Judge

"18. Gentlemen of the jury, if you believe the evidence in this case, you must return a verdict for the defendant S. S. Seay, Sr."

Refused, Jones, Judge

"19. Gentlemen of the jury, unless from the evidence you are convinced that the defendant S. S. Seay, Sr. consented to the use of his name in connection with the publication of the advertisement complained of, you must find for said defendant."

Refused, Jones, Judge

"20. I charge you gentlemen of the jury, that unless on the evidence you are convinced that the defendant S. S. Seay, Sr. had knowledge of the writing or publication of the advertisement complained of, prior to publication in the New York Times, dated Tuesday, March 29, 1960, you must find for the defendant."

Refused, Jones, Judge

[fol. 1957y]

REFUSED CHARGES REQUESTED BY THE DEFENDANT FRED L. SHUTTLESWORTH

The following written charges were requested by the defendant, Fred L. Shuttlesworth, and refused by the Court in writing, viz:

"1. I charge you, gentlemen of the jury, to find a verdict in favor of the Defendant, Fred L. Shuttlesworth."

Refused, Jones, Judge

"2. I charge you, gentlemen of the jury, that if you find that the Defendant, Fred L. Shuttlesworth, did not authorize the publication of the article in question which appeared in the New York Times on Tuesday, March 29, 1960, you must find a verdict in favor of him."

Refused, Jones, Judge

"3. I charge you, gentlemen of the jury, that if you find that the Defendant, Fred L. Shuttlesworth, did not consent to the publication of the article in question which appeared in the New York Times on Tuesday, March 29, 1960, you must find a verdict in favor of him."

Refused, Jones, Judge

"4. I charge you, gentlemen of the jury, that if you find that the Defendant, Fred L. Shuttlesworth, did not publish or cause to be published the article in question which appeared in the New York Times on Tuesday, March 29, 1960, you must find a verdict for him."

Refused, Jones, Judge

"5. I charge you, gentlemen of the jury, that if you find that the Defendant, Fred L. Shuttlesworth, did not authorize anyone to publish on his behalf the article in question which appeared in the New York Times on Tuesday, March 29, 1960, you must find a verdict in favor of him."

Refused, Jones, Judge

"6. I charge you, gentlemen of the jury, that if from the evidence you find that the Defendant, Fred L. Shuttlesworth, did not, either directly or through some other person authorised to act for him, publish or consent to the publication of the statements complained of which appeared in the New York Times on Tuesday, March 29, 1960, you must find a verdict in favor of him."

Refused, Jones, Judge

"8. I charge you, gentlemen of the jury, that unless from the evidence you are convinced that the Defendant, Fred L. [fol. 1957a] Shuttlesworth, was the author or the publisher of the advertisement which appeared in the New York Times (the subject matter of this suit) on Tuesday, March 29, 1960, you must return a verdict for said Defendant."

Refused, Jones, Judge

"9. I charge you, gentlemen of the jury, to constitute a libel, there must be a publication as well as a writing, and

if the publication was made without the consent of the Defendant, Fred L. Shuttlesworth, the offense is not complete as to him and you must return a verdict in favor of him."

Refused, Jones, Judge

"11. I charge you, gentlemen of the jury, that if you find from the evidence that the Defendant, Fred L. Shuttlesworth, had no knowledge of the writing or publication of the advertisement, prior to publication, that appeared in the New York Times, dated, Tuesday, March 29, 1960, you must return a verdict for the said Defendant."

Refused, Jones, Judge

"12. I charge you, gentlemen of the jury, that the burden of proof is upon the Plaintiff to reasonably satisfy you from the evidence in this case that the Defendant, Fred L. Shuttlesworth, directly, or indirectly, or through some other person authorized to act for him, published or consented to the publication of the statements complained of which appeared in the New York Times on March 29, 1960, and unless from the evidence you are convinced that said Defendant did directly or indirectly or through some other person authorized to act for him, published or consented to the publication of said statements, then you must return a verdict for the defendant Fred L. Shuttlesworth."

Refused, Jones, Judge

"13. I charge you, gentlemen of the jury, that if you believe from the evidence that the Defendant, Fred L. Shuttlesworth, did Not authorize the use of his name in connection with the publication of the advertisement which appeared in the New York Times on March 29, 1960, you must return a verdict for said Defendant."

Refused, Jones, Judge

"14. Gentlemen of the jury, if you believe from the evidence that the Defendant Fred L. Shuttlesworth, did not consent to the use of his name in connection with the

publication of the advertisement which appeared in the New York Times on March 29, 1960, you must return a [fol. 1957aa] verdict for said Defendant."

Refused, Jones, Judge

"16. I charge you, gentlemen of the jury, if from the evidence you believe that the defendant Fred L. Shuttlesworth did not publish or cause to be published the alleged libelous matter contained in the advertisement which appeared in the New York Times on March 29, 1960, then, as a matter of law, there was no legal obligation on the part of this defendant to reply to the letter written by the plaintiff to this defendant demanding a retraction of the alleged libelous matters, and you must return a verdict for said defendant."

Refused, Jones, Judge

"17. I charge you, gentlemen of the jury, that if from the evidence you believe that the defendant never authorized any one to affix his name to the advertisement which is the subject matter of this suit, and if you further believe from the evidence that the plaintiff wrote a letter to the Defendant demanding a retraction of certain alleged libelous matter contained in said advertisement, and if you further believe from the evidence that the Defendant did not reply to the Plaintiff's letter, I charge you as a matter of law that the Defendant's failure to reply to Plaintiff's letter cannot be considered by you as an admission that he published the alleged libelous matter; under such circumstances the law does not require the Defendant to reply to Plaintiff's letter, and you must return a verdict for the Defendant Fred L. Shuttlesworth."

Refused, Jones, Judge

"18. Gentlemen of the jury, if you believe the evidence in this case, you must return a verdict for the defendant Fred L. Shuttlesworth."

Refused, Jones, Judge

"19. Gentlemen of the jury, unless from the evidence you are convinced that the defendant Fred L. Shuttlesworth

consented to the use of his name in connection with the publication of the advertisement complained of, you must find for said defendant."

Refused, Jones, Judge

"20. I charge you gentlemen of the jury, that unless on the evidence you are convinced that the defendant Fred L. Shuttlesworth had knowledge of the writing or publication of the advertisement complained of, prior to publication in the New York Times, dated, Tuesday, March 29, 1960, you must find for the defendant."

Refused, Jones, Judge

[fol. 1958]

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

Thursday, November 3, 1960

Court Met Pursuant to Adjournment

Present the Honorable Walter B. Jones, Judge Presiding

Damages

#27416

L. B. SULLIVAN

vs.

THE NEW YORK TIMES CO., a corp., RALPH D. ABERNATHY, FRED L. SHUTTLESWORTH, S. S. SEAY, SR., and J. E. LOWERY

FINAL JUDGMENT, JURY AND VERDICT—November 3, 1960

This day came the parties by attorney and issue being joined between the parties and upon calling a jury of good and lawful men, to-wit: Joseph W. McDade, Sr., and eleven others who having been duly empaneled and sworn according to law upon their oaths do say: "We the jury find in favor of the plaintiff and assess his damages at $500,000.00".

It is therefore considered, ordered and adjudged by the Court that the plaintiff have and recover of the defendant the said sum of Five Hundred Thousand and no/100 ($500,000.00) Dollars, together with the cost in this behalf expended, for all of which let execution issue.

[fol. 1958a] Reporter's Certificate to foregoing transcript (omitted in printing).

[fol. 1959]

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

At Law.

Case No. 27416

L. B. SULLIVAN, Plaintiff,

vs.

THE NEW YORK TIMES COMPANY, A Corporation, et als. Defendants.

Transcript of Proceedings on Defendant's The New York Times Company, a Corporation, Motion for a New Trial

Before: Hon. Walter B. Jones, Circuit Judge, Presiding, at the Court House, Montgomery, Alabama, Friday, March 3, 1961.

APPEARANCES:

For the Plaintiff: (L. B. Sullivan)

Messrs. Steiner, Crum & Baker, Attorneys at Law, Montgomery Alabama. By: S. R. Baker, Esq., Robert Steiner, III, Esq., M. R. Nachman, Jr.

Messrs. Scott, Whitesell & Scott, Attorneys at Law, Montgomery, Alabama. By: Calvin M. Whitesell, Esq.

For the Defendant: (The New York Times Company)

Messrs. Beddow, Embry & Beddow, Attorneys at Law, Birmingham, Alabama. By: T. Eric Embry, Esq., and Roderick M. MacLeod, Esq.

[fol. 1960] For the Individual Defendants:
(Ralph D. Abernathy, S. S. Seay, Sr., Fred L. Shuttlesworth and N. L. Lowery.)

Vernon L. Crawford, Esq., Attorney at Law, Mobile, Alabama. Charles Conley, Esq., Attorney at Law, Montgomery, Alabama. Solomon S. Seay, Jr., Esq., Attorney at Law, Montgomery, Alabama.

[fol. 1960a]

STIPULATION REGARDING RECORD—Filed June 22, 1961

At the outset of the proceedings had on March 3, 1961 in connection with the hearing on the motion of the defendant New York Times Company for a new trial, this defendant offered testimony in support of its motion for a new trial. The testimony so offered is contained in the transcript in the form of an offer of proof from this defendant. Plaintiff objected to the introduction of any additional testimony in support of the motion for a new trial, and insisted that the trial court should consider the motion on the basis of the record made at and before the trial on the merits, which culminated in a verdict and judgment for the plaintiff on November 3, 1960.

Plaintiff's objections were based on the following grounds:

1. That as to matters and occurrences covered by the proffered items of evidence which had occurred before or during the trial on the merits, they should have been offered in evidence and brought to the attention of the Court and appropriate action by the Court should have been requested before the close of the trial on November 3, 1960.

2. That as to newspaper articles appearing subsequent to the time the verdict of the jury was rendered, they could not possibly have influenced the deliberations of the jury in reaching its verdict.

3. Under Alabama law, as set forth in such cases as Alabama Gas Co. v. Jones, 244 Ala. 413, 417, 13 So. 2d. 873; and Camp v. A.C.L. R. Co., 251 Ala. 183, 36 So. 2d. 331, the Court in considering the motion for a new trial was confined to the evidence which was introduced on the trial of the case, and could not consider any other evidence in support of or against the verdict. No grounds of the motion for a new trial of this defendant concern a recognized exception to this rule where new trial is sought on the basis of newly discovered evidence.

4. Notice as required by Rule 22 of the Rules of Practice in the Circuit and Inferior Courts had not been given [fol. 1960b] by this defendant to the plaintiff one day before the argument on the motion for a new trial. Plaintiff cited in support of this ground City of Birmingham v. Lane, 210 Ala. 252, 97 So. 728; McCormack Bros. v. Arnold, 233 Ala. 504, 137 So. 288; and Stone v. State, 243 Ala. 605, 11 So. 2d. 386.

The trial court ruled that ground 4 above would not bar the introduction of testimony since Rule 22 applied to additional evidence by way of affidavit only. Plaintiff excepted to this ruling of the Court.

The Court did rule, however, that the evidence proffered by defendant New York Times Company could not be received and considered because of grounds 1, 2 and 3 set out above.

Accordingly, the trial court declined to receive and consider any of the evidence offered by the defendant New York Times in support of its motion for a new trial, said offer of proof appearing in the course of pages 1961 through 2004, and in Volume V of the transcript.

The defendant excepted to this ruling of the Court.

The foregoing should be inserted immediately before page 1961 of the transcript by agreement of counsel as an accurate summary of the proceedings described, said agree-

ment being evidenced by the signature of counsel of record hereon.

New York Times Company, By: Beddow, Embry & Beddow, Its Attorneys.

L. B. Sullivan, By: Steiner, Crum & Baker, His Attorneys.

Approved:

/s/ Walter B. Jones, Judge.

[File endorsement omitted]

[fol. 1961]

COLLOQUY BETWEEN COURT AND COUNSEL ON MOTION FOR NEW TRIAL

Mr. MacLeod: If the Court please, in order to get the Record straight, I think we should start over from the beginning in order to get it exactly right in the Record.

The Court: Well, now, you are talking about Ground No. 182, are you not?

Mr. MacLeod: That's right, Your Honor.

The Court: All right. Proceed.

Mr. MacLeod: At this time, Your Honor, in support of our ground No. 182 on our Motion for a New Trial in this cause, we offer to put on the witness stand Mrs. Wanda Bush, who is the librarian and custodian of the Records of the Montgomery Advertiser and the Alabama Journal newspapers.

Mr. Nachman: If the Court please, we object to the putting of a witness on the witness stand and urge that the showing should be restricted to a statement of counsel as to what he proposes to show in support of ground 182 and by whom and by what.

The Court: I think that's the correct procedure.

Mr. MacLeod: If the Court please, we would like to make this same offer of proof in support of ground 182 and ground 183 of the Motion for a New Trial in this cause. We offer to put Mrs. Bush on the witness stand as a witness in support of each ground.

The Court: Well, just talking out loud here, suppose she could testify that these pictures you have attached here to the Motion were taken and published during the trial and displayed on television but she can't say that was the denial of a fair and an impartial verdict by the jury—she can't contend that was the denial of a fair and impartial trial by the jury.

Mr. Embry: That's for the Court, Your Honor.

The Court: Well, that's what I say—

Mr. MacLeod: That's for the Court to decide, Your Honor, but she can testify to facts—

[fol. 1962] The Court: I am willing to let you make that offer.

Mr. MacLeod: All right, Your Honor. I—

The Court: You can make that offer and they can object and then I will rule on it.

Mr. MacLeod: Your Honor, we offer to prove by the witness, Mrs. Wanda Bush, who is the librarian and custodian of the records of the Mongtomery Advertiser newspaper and also librarian and custodian of the records of the Alabama Journal newspaper, both of which are newspapers published in Montgomery, Alabama and circulated generally throughout Montgomery County, Alabama, that these photographs marked as exhibits 2 and 3 which are attached to the defendant, The New York Times, Motion for a New Trial were published in the Alabama Journal newspaper, and that they are pictures of the jury during the trial of the case of L. B. Sullivan against the New York Times Company and that they are pictures which were taken in the court room while the court trial was in progress and that they were published on the front page of the Alabama Journal newspaper during the progress of that trial and we further offer to prove by Mrs. Bush that in conjunction with Exhibit No. 2 attached to the Motion for a New Trial that the names of the twelve jurors who were selected to try the case of Sullivan against The New York Times Company were published on the front page of the Alabama Journal newspaper during the progress of that trial. We further offer to prove by Mrs. Bush in support of Ground Nos. 182 and 183 of the Motion for

a New Trial in this cause that prior to the trial of that case by a jury that the Montgomery Advertiser newspaper—

Mr. Nachman: We will concede that. We will concede that because that's already in the Record.

Mr. MacLeod: That the Montgomery Advertiser newspaper had published—just one minute. Let me get those figures here, Your Honor. We offer to prove that in connection with the trial of L. B. Sullivan versus The New York Times Company that prior to the trial of that case, commencing on the 31st day of October, 1960 that the Montgomery Advertiser had published some forty-five articles in connection with that law suit and that of those [fol. 1963] articles many of them dealt with factual situations about the case and contentions of the parties and that of those articles many of them were editorials that were published in that newspaper and that each editorial that appeared in the paper was derogatory of The New York Times and that each editorial that appeared in that newspaper denounced The New York Times and that each one was in support of the plaintiff's position in that case.

Mr. Nachman: Just a minute. Your Honor, we object to this form of a showing. This is just a speech by Mr. MacLeod. This witness as the librarian would certainly not be able to say whether an editorial was derogatory or whether an editorial denounced The New York Times or—

The Court: Well, I think the newspaper articles would have to speak for themselves.

Mr. Nachman: If the Court please, Mr. MacLeod has said that there were many editorials and we think that he ought to specify each one and he should distinguish as to whether it is a news story or an editorial—

The Court: I think the 7th day of April, 1960 is one. I think we ought to stick to September 7th, 1960. That's the one you are relying on.

Mr. MacLeod: Your Honor, we offer to show by the witness, Mrs. Bush, that in the Montgomery Advertiser of April 9th, 1960 an article appeared entitled, "Commissioners Demand Retraction." "King Ad Charges Prompt Move."

The Court: Well, now, where do you set that out in connection with 183 here?

Mr. MacLeod: Well, I will read that to Your Honor.

The Court: It says that April 7th, 1960 was an editorial.

Mr. MacLeod: These articles are offered in support of the allegation in Ground 183 that there was widespread community sentiment and interest in this case.

Mr. Nachman: We would like to add this objection, Your Honor. What they now propose to show goes even beyond [fol. 1964] Ground 183 because that refers to a particular editorial—such editorial it says. Then it refers to certain pictures of the jury on the front page and now they propose to go even beyond 183 which they said was the ground they were submitting these matters on. We say that the showing is out of bounds and that the only thing they can even try to make a showing on are the matters contained in these grounds.

The Court: It appears to the Court you ought to be confined to April 9th, 1960. Whatever that date is, April 7th, 1960 or April 9th, 1960.

Mr. MacLeod: Let me read this allegation, Your Honor. This is part of the allegation. We are talking about the community sentiment now at the bottom of page 45 in the Motion and I quote. "Such community sentiment was conveyed to the jury which tried this cause by said editorial and other publicity throughout the community." That, Your Honor, in itself is enough to make it relevant and pertinent to that ground of the Motion in addition to the other allegations in there in reference to the widespread community interest in the case. We offer to introduce first, Your Honor, an article that appeared in the Montgomery Advertiser on April 9th, 1960 entitled, "Commissioners Demand Retraction."

Mr. Nachman: We have our same objection throughout with the same ruling—

The Court: Yes.

Mr. MacLeod: We would like to have this identified as Defendant's Exhibit No. 1 to the Motion for a New Trial, Mr. Reporter.

The Reporter: It is marked Defendant's Exhibit No. 1.

Mr. MacLeod: We offer to show Your Honor that the witness, Mrs. Bush, would identify an article published

in the Montgomery Advertiser on April 16th, 1960 entitled, "Research on Move to Sue Times Furnished by Gallion."

Mr. Nachman: Do each one of these have a date?

Mr. MacLeod: Yes. They are all dated. We would like to have this one marked as Defendant's Exhibit No. 2 on the Motion for a New Trial.

[fol. 1965] Mr. Baker: We would like to add an additional ground of objection in that that one does not relate to the plaintiff in this cause nor to his attorneys.

Mr. MacLeod: We offer to prove by the witness, Mrs. Bush, that there appeared in the Montgomery Advertiser under date of April 8th, 1960 entitled, "Gallion Lays Legal Action Against King Ad Sponsors." We ask that one be identified as Defendant's Exhibit No. 3 on the Motion.

Mr. Baker: We add the same additional ground of objection to that one, Your Honor,

Mr. Embry: If the Court please, I have a suggestion that I think will save time. If it is all right, we can stipulate that the Court Reporter can supply an identifying statement in each of these and we can give them to the Court Reporter and the Court Reporter can supply in each of those identifying statements the actual caption of the story. Is that what you had in mind, Mr. Nachman?

Mr. Nachman: Yes. Whatever Mr. MacLeod wants with reference to identification or caption on each one of these can be supplied later by the Court Reporter so that each one won't have to be read out here in Court and we will have the same objection to each one if that's agreeable with counsel.

Mr. MacLeod: Well, could we do this? I think the newspaper would like to have their articles back. Could we substitute copies for the Record? Will that be agreeable to you, Mr. Nachman?

Mr. Nachman: That's agreeable.

Mr. MacLeod: Your Honor, we have a group of 76 articles that appeared in the Alabama Journal. Could we handle those in the same way?

The Court: It is all right with the Court, gentlemen.

Mr. Nachman: Yes. We have the same objection and same ruling.

Mr. MacLeod: Your Honor, that concludes what we offer

to prove by the witness, Mrs. Bush, and we would like a ruling on that for the Record, if the Court please.

[fol. 1966] The Court: Do you want to state the same grounds of objection or—

Mr. Nachman: Yes, sir. We do. These were matters that should have been brought up during the progress of the trial or during the trial or before the trial and they all ante-date or are concurrent with the time of the trial and under our decisions of the Alabama Gas Company against Jones, 244 Ala., 413, since they relate to a ground of excessiveness that they are inappropriate as evidence on a Motion for a New Trial and we also urge Rule 22 as an additional ground of objection.

The Court: I think the objection is well taken. I sustain the objection.

Mr. MacLeod: We except, Your Honor.

Mr. Embry: Did you sustain it, Your Honor?

The Court: Yes.

Mr. Embry: We except.

OFFERS IN EVIDENCE

(The following proposed exhibits were offered into evidence as a showing to the proposed testimony of Mrs. Wanda Bush in support of the Motion for a New Trial in this cause and by stipulation of Counsel with approval of the Court, all previous grounds of objection are assigned hereto separately and severally to each proposed exhibit and the Court sustained each separate and several objection, to which ruling of the Court, the Defendant, The New York Times Company, separately and severally excepts.)

(Newspaper Article, The Montgomery Advertiser, captioned, "Research on Move to Sue Times Furnished by Gallion", dated April 16, 1960 offered in evidence and identified as Defendant's Exhibit No. 1.)

[fol. 1967] (Newspaper Article, The Montgomery Advertiser, captioned, "Commissioners Demand Retraction", dated April 9, 1960, offered in evidence and identified as Defendant's Exhibit No. 2.)

(Newspaper Article, The Montgomery Advertiser, captioned, "Gallion Weighs Legal Action Against King Ad

Sponsors", dated April 8, 1960, offered in evidence and identified as Defendant's Exhibit No. 3.)

(Newspaper Article, The Montgomery Advertiser, captioned, "Commissioners Sue Newspaper", dated April 20, 1960, offered in evidence and identified as Defendant's Exhibit No. 4.)

(Newspaper Article, The Montgomery Advertiser, captioned, "Patterson Plans N. Y. Times Suit", dated April 28, 1960, offered in evidence and identified as Defendant's Exhibit No. 5.)

(Newspaper Article, The Montgomery Advertiser, captioned, "Gallion Libel Suit Decision Ready Today", dated April 19, 1960, offered in evidence and identified as Defendant's Exhibit No. 6.)

[fol. 1968] (Newspaper Article, The Montgomery Advertiser, captioned, "The Big Lie", dated April 15, 1960, offered in evidence and identified as Defendant's Exhibit No. 7.)

(Newspaper Article, The Montgomery Advertiser, captioned, "Commissioners To File Damage Suits Against New York Times For Articles", dated April 16, 1960, offered in evidence and identified as Defendant's Exhibit No. 8.)

(Newspaper Article, The Montgomery Advertiser, captioned, "The Abolitionist Hellmouths", dated April 17, 1960, offered in evidence and identified as Defendant's Exhibit No. 9.)

(Newspaper Article, The Montgomery Advertiser, captioned, "State Board Told to File Times Suit", dated April 21, 1960, offered in evidence and identified as Defendant's Exhibit No. 10.)

(Newspaper Article, The Montgomery Advertiser, captioned, "Times Asks Court Quash Damage Suit", dated May 21, 1960, offered in evidence and identified as Defendant's Exhibit No. 11.)

[fol. 1969] (Newspaper Article, The Montgomery Advertiser, captioned, "Times Studies Correction of 2 Stories",

dated April 27, 1960, offered in evidence and identified as Defendant's Exhibit No. 12.)

(Newspaper Article, The Montgomery Advertiser, captioned, "Gallion Lauds Suit Planned Against Paper", dated April 20, 1960, offered in evidence and identified as Defendant's Exhibit No. 13.)

(Newspaper Article, The Montgomery Advertiser, captioned, "The Missing If Men Choked", dated May 1, 1960, offered in evidence and identified as Defendant's Exhibit No. 14.)

(Newspaper Article, The Montgomery Advertiser, captioned, "$5 Million Suit Started by Governor", dated May 12, 1960, offered in evidence and identified as Defendant's Exhibit No. 15.)

(Newspaper Article, The Montgomery Advertiser, captioned, "Birmingham Statements Published In The Times", dated May 4, 1960, offered in evidence and identified as Defendant's Exhibit No. 16.)

[fol. 1970] (Newspaper Article, The Montgomery Advertiser, captioned, "Fall Out From Ad Error", dated May 22, 1960, offered in evidence and identified as Defendant's Exhibit No. 17.)

(Newspaper Article, The Montgomery Advertiser, captioned, "Suits Filed Against Times", dated May 7, 1960, offered in evidence and identified as Defendant's Exhibit No. 18.)

(Newspaper Article, The Montgomery Advertiser, captioned, "Patterson Weighs Suit in Light of Retraction", dated May 17, 1960, offered in evidence and identified as Defendant's Exhibit No. 19.)

(Newspaper Article, The Montgomery Advertiser, captioned, "The Times Acknowledges Error", dated May 17, 1960, offered in evidence and identified as Defendant's Exhibit No. 20.)

(Newspaper Article, The Montgomery Advertiser, captioned, "Times Motion Asks Dismissal of Suits", dated

May 27, 1960, offered in evidence and identified as Defendant's Exhibit No. 21.)

[fol. 1971] (Newspaper Article, The Montgomery Advertiser, captioned, "Five Negroes, Times Sued by Patterson", dated May 31, 1960, offered in evidence and identified as Defendant's Exhibit No. 22.)

(Newspaper Article, The Montgomery Advertiser, captioned, "Times Challenges Bessemer Suits", dated June 14, 1960, offered in evidence and identified as Defendant's Exhibit No. 23.)

(Newspaper Article, The Montgomery Advertiser, captioned, "N. Y. Times Loses in Move To Have Records Closeted", dated July 1, 1960, offered in evidence and identified as Defendant's Exhibit No. 24.)

(Newspaper Article, The Montgomery Advertiser, captioned, "Times Switches 'Bama, Ole Miss", dated June 2, 1960, offered in evidence and identified as Defendant's Exhibit No. 25.)

(Newspaper Article, The Montgomery Advertiser, captioned, "Times Sued by Officials in Bessemer", dated June 1, 1960, offered in evidence and identified as Defendant's Exhibit No. 26.)

[fol. 1972] (Newspaper Article, The Montgomery Advertiser, captioned, "Lawyers Add to Documents In Libel Suit", dated July 27, 1960, offered in evidence and identified as Defendant's Exhibit No. 27.)

(Newspaper Article, The Montgomery Advertiser, captioned, "Times Suit Testimony Ends, Arguments Set", dated July 28, 1960, offered in evidence and identified as Defendant's Exhibit No. 28.)

(Newspaper Article, The Montgomery Advertiser, captioned, "Detective's Suit Charges Times", dated July 20, 1960, offered in evidence and identified as Defendant's Exhibit No. 29.)

(Newspaper Article, The Montgomery Advertiser, captioned, "Attorneys Contend N. Y. Times Didn't Do Business

In State", dated July 20, 1960, offered in evidence and identified as Defendant's Exhibit No. 30.)

(Newspaper Article, The Montgomery Advertiser, captioned, "Judge Rules Times Suit Legal Here", dated August 6, 1960, offered in evidence and identified as Defendant's Exhibit No. 31.)

[fol. 1973] (Newspaper Article, The Montgomery Advertiser, captioned, "Judge's Ruling Will Hinder Appeal", dated August 7, 1960, offered and identified as Defendant's Exhibit No. 32.)

(Newspaper Article, The Montgomery Advertiser, captioned, "Jefferson Calls Times Reporter", dated August 26, 1960, offered and identified as Defendant's Exhibit No. 33.)

(Newspaper Article, The Montgomery Advertiser, captioned, "U. S. Judge Deals Times Legal Blow", dated September 3, 1960, offered in evidence and identified as Defendant's Exhibit No. 34.)

(Newspaper Article, The Montgomery Advertiser, captioned, "Methodist Leader Jailed For Refusing To Answer", dated September 3, 1960, offered in evidence and identified as Defendant's Exhibit No. 35.)

(Newspaper Article, The Montgomery Advertiser, captioned, "Methodist Minister Awaits Decision By Supreme Court", dated September 4, 1960, offered in evidence and identified as Defendant's Exhibit No. 36.)

[fol. 1974] (Newspaper Article, The Montgomery Advertiser, captioned, "Jury Meets Again Today In Race Study", dated September 6, 1960, offered in evidence and identified as Defendant's Exhibit No. 37.)

(Newspaper Article, The Montgomery Advertiser, captioned, "Jefferson Jury Indicts Times Writer For Libel", dated September 7, 1960, offered in evidence and identified as Defendant's Exhibit No. 38.)

(Newspaper Article, The Montgomery Advertiser, captioned, "Methodists Boot Cleric Held In Jail", dated September 9, 1960, offered in evidence and identified as Defendant's Exhibit No. 39.)

(Newspaper Article, The Montgomery Advertiser, captioned, "The Talk of The Town", dated August 7, 1960, offered in evidence and identified as Defendant's Exhibit No. 40.)

(Newspaper Article, The Montgomery Advertiser, captioned, "Way Cleared For Appeal By N. Y. Times", dated September 9, 1960, offered in evidence and identified as Defendant's Exhibit No. 41.)

[fol. 1975] (Newspaper Article, The Montgomery Advertiser, captioned, "Ousted Cleric Still Vague About Future", dated September 10, 1960, offered in evidence and identified as Defendant's Exhibit No. 42.)

(Newspaper Article, The Montgomery Advertiser, captioned, "Times Appeals Ruling Allowing Alabama Suit", dated September 10, 1960, offered in evidence and identified as Defendant's Exhibit No. 43.)

(Newspaper Article, The Montgomery Advertiser, captioned, "Controversial Cleric Given African Duty", dated September 11, 1960, offered in evidence and identified as Defendant's Exhibit No. 44.)

(Newspaper Article, The Montgomery Advertiser, captioned, "State Finds Formidable Legal Club To Swing At Out-Of-State Press", dated September 25, 1960, offered in evidence and identified as Defendant's Exhibit No. 45.)

(Newspaper Article, The Montgomery Advertiser, captioned, "Times Loses Bid To Delay Libel Trials", captioned September 22, 1960, offered in evidence and identified as Defendant's Exhibit No. 46.)

[fol. 1976] (Newspaper Article, The Montgomery Advertiser, captioned, "Issue of Back Issues Argues In New York Times Suit Here," dated June 8, 1960, offered in evidence and identified as Defendant's Exhibit No. 47.)

(Newspaper Article, The Montgomery Advertiser, captioned, "N. Y. Times Retracts Two Ad Paragraphs", dated May 16, 1960, offered in evidence and identified as Defendant's Exhibit No. 48.)

(Newspaper Article, The Montgomery Advertiser, captioned, "Jones Studies Times Motion To Shift Suit", dated August 2, 1960, offered in evidence and identified as Defendant's Exhibit No. 49.)

(Newspaper Article, The Montgomery Advertiser, captioned, "N. Y. Times Loses Bid To Fend Off Libel Suit", dated October 29, 1960, offered in evidence and identified as Defendant's Exhibit No. 50.)

(Newspaper Article, The Montgomery Advertiser, captioned, "Times Libel Suit Opens Here Today", dated November 1, 1960, offered in evidence and identified as Defendant's Exhibit No. 51.)

[fol. 1977] (Newspaper Article, The Montgomery Advertiser, captioned, "Jurors Selected For Times Suit", dated November 1, 1960, offered in evidence and identified as Defendant's Exhibit No. 52.)

(Newspaper Article, The Montgomery Advertiser, captioned, "Witnesses Say Ad Reflected on Sullivan", dated November 2, 1960, offered in evidence and identified as Defendant's Exhibit No. 53.)

(Newspaper Article, The Montgomery Advertiser, captioned, "Writer of Ad Takes Stand In Libel Trial", dated November 3, 1960, offered in evidence and identified as Defendant's Exhibit No. 54.)

(Newspaper Article, The Montgomery Advertiser, captioned, "Sullivan Case Against Times Is Continuing", dated November 2, 1960, offered in evidence and identified as Defendant's Exhibit No. 55.)

(Newspaper Article, The Montgomery Advertiser, captioned, "$500,000 Damages Awarded Sullivan By Times Suit Jury", dated November 4, 1960, offered in evidence and identified as Defendant's Exhibit No. 56.)

[fol. 1978] (Newspaper Article, The Montgomery Advertiser, captioned, "Grossly Unjust Says Times: Asks New

Trial", dated December 2, 1960, offered in evidence and identified as Defendant's Exhibit No. 57.)

(Newspaper Article, The Montgomery Advertiser, captioned, "Lawyers In Times Case Agree To Delay Hearing", dated December 16, 1960, offered in evidence and identified as Defendant's Exhibit No. 58.)

(Newspaper Article, The Montgomery Advertiser, captioned, "Circuit Court '61 Sessions Start January 9", dated December 28, 1960, offered in evidence and identified as Defendant's Exhibit No. 59.)

(Newspaper Article, The Montgomery Advertiser, captioned, "Mayor's Suit Against Times Set For Trial", dated December 27, 1960, offered in evidence and identified as Defendant's Exhibit No. 60.)

(Newspaper Article, The Montgomery Advertiser, captioned, "Sullivan Suit Retrial Bid Set March 3", dated January 14, 1961, offered in evidence and identified as Defendant's Exhibit No. 61.)

[fol. 1979] (Newspaper Article, The Montgomery Advertiser, captioned, "Times Attorney Halted In Quizzing of Mayor", dated January 18, 1961, offered in evidence and identified as Defendant's Exhibit No. 62.)

(Newspaper Article, The Montgomery Advertiser, captioned, "Judge Rules Time Expired For Retrial", dated January 19, 1961, offered in evidence and identified as Defendant's Exhibit No. 63.)

(Newspaper Article, The Montgomery Advertiser, captioned, "Mayor's Suit Against Times Opens Today", dated January 30, 1961, offered in evidence and identified as Defendant's Exhibit No. 64.)

(Newspaper Article, The Montgomery Advertiser, captioned, "Witness Feel James Target Of Ad In Times", dated January 31, 1961, offered in evidence and identified as Defendant's Exhibit No. 65.)

(Newspaper Article, The Montgomery Advertiser, captioned, "Negroes Facing Seizure Of Property Seek Relief", dated February 5, 1961, offered in evidence and identified as Defendant's Exhibit No. 66.)

[fol. 1980] (Newspaper Article, The Montgomery Advertiser, captioned, "Attachment of Money Being Sought", dated February 7, 1961, offered in evidence and identified as Defendant's Exhibit No. 67.)

(Newspaper Article, The Montgomery Advertiser, captioned, "Negroes' Attorneys Seek Cut In Million-Dollar Bond", dated February 8, 1960, offered in evidence and identified as Defendant's Exhibit No. 68.)

(Newspaper Article, The Montgomery Advertiser, captioned, "Auto Seized For Payment In Libel Case", dated February 4, 1960, offered in evidence and identified as Defendant's Exhibit No. 69.)

(Newspaper Article, The Montgomery Advertiser, captioned, "New Trial Motion Set In Libel Suit", dated February 3, 1961, offered in evidence and identified as Defendant's Exhibit No. 70.)

(Newspaper Article, The Montgomery Advertiser, captioned, "Mayor Gains Libel Verdict of $500,000", dated February 2, 1961, offered in evidence and identified as Defendant's Exhibit No. 71.)

[fol. 1981] (Newspaper Article, The Montgomery Advertiser, captioned, "Negroes Mix Circuit Court At Libel Trial", dated February 1, 1961, offered in evidence and identified as Defendant's Exhibit No. 72.)

(Newspaper Article, The Montgomery Advertiser, captioned, "Negroes' Suit Names State, City Officials", dated February 23, 1961, offered in evidence and identified as Defendant's Exhibit No. 73.)

(Newspaper Article, The Montgomery Advertiser, captioned, "Car Attached From Negro Minister Sells For $400", dated February 22, 1961, offered in evidence and identified as Defendant's Exhibit No. 74.)

(Newspaper Article, The Montgomery Advertiser, captioned, "Witnesses Say Ad Reflected On Sullivan", dated November 2, 1960, offered in evidence and identified as Defendant's Exhibit No. 75.)

(Newspaper Article, The Montgomery Advertiser, captioned, "The Times Acknowledges Error", dated May 17, 1960, offered in evidence and identified as Defendant's Exhibit No. 76.)

[fol. 1982] (Newspaper Article, The Montgomery Advertiser, captioned, "Will They Purge Themselves?", dated April 7, 1960, offered in evidence and identified as Defendant's Exhibit No. 77.)

(Newspaper Article, The Alabama Journal, captioned, "Liberals Appeal For Funds To Defend M. L. King", dated April 5, 1960, offered in evidence and identified as Defendant's Exhibit No. 78.)

(Newspaper Article, The Alabama Journal, captioned, "City Demands Retraction Of Ad In Times", dated April 9, 1960, offered in evidence and identified as Defendant's Exhibit No. 79.)

(Newspaper Article, The Alabama Journal, captioned, "Gallion Plans To Take Action On Times Ad", dated April 8, 1960, offered in evidence and identified as Defendant's Exhibit No. 80.)

(Newspaper Article, The Alabama Journal, captioned, "Not The First Lie About South", dated April 9, 1960, offered in evidence and identified as Defendant's Exhibit No. 81.)

[fol. 1983] (Newspaper Article, The Alabama Journal, captioned; "B'ham. Officials To Sue N.Y. Times", dated April 16, 1960, offered in evidence and identified as Defendant's Exhibit No. 82.)

(Newspaper Article, The Alabama Journal, captioned, "Times Reveals Critical Letters", dated April 19, 1960, offered in evidence and identified as Defendant's Exhibit No. 83.)

(Newspaper Article, The Alabama Journal, captioned, "Source Says Gallion To Urge Ad Suit", dated April 15, 1960, offered in evidence and identified as Defendant's Exhibit No. 84.)

(Newspaper Article, The Alabama Journal, captioned, "Report Due On Tuesday On Libel Suit", dated April 17, 1960, offered in evidence and identified as Defendant's Exhibit No. 85.)

(Newspaper Article, The Alabama Journal, captioned, "Unworthy Newspaper Policy", dated April 18, 1960, offered in evidence and identified as Defendant's Exhibit No. 86.)

[fol. 1984] (Newspaper Article, The Alabama Journal, captioned, "Gallion Holding Recommendation For School Board", dated April 19, 1960, offered in evidence and identified as Defendant's Exhibit No. 87.)

(Newspaper Article, The Alabama Journal, captioned, "City Officials Sue N.Y. Times", dated April 20, 1960, offered in evidence and identified as Defendant's Exhibit No. 88.)

(Newspaper Article, The Alabama Journal, captioned, "Governor To Rule On Libel Suits Early Next Week", dated April 21, 1960, offered in evidence and identified as Defendant's Exhibit No. 89.)

(Newspaper Article, The Alabama Journal, captioned, "Not a City Of Race Terror", dated April 22, 1960, offered in evidence and identified as Defendant's Exhibit No. 90.)

(Newspaper Article, The Alabama Journal, captioned, "It's The Same Old Thing", dated April 26, 1960, offered in evidence and identified as Defendant's Exhibit No. 91.)

[fol. 1985] (Newspaper Article, The Alabama Journal, captioned, "Governor Plans To Sue Times For Ad Libel", dated April 28, 1960, offered in evidence and identified as Defendant's Exhibit No. 92.)

(Newspaper Article, The Alabama Journal, captioned, "Times Will Probe Accuracy Of Stories", dated April 27, 1960, offered in evidence and identified as Defendant's Exhibit No. 93.)

(Newspaper Article, The Alabama Journal, captioned, "The Times And Salisbury", dated May 7, 1960, offered in evidence and identified as Defendant's Exhibit No. 94.)

(Newspaper Article, The Alabama Journal, captioned, "B'ham. Officials File Times Suits of $500,000 Each", dated May 6, 1960, offered in evidence and identified as Defendant's Exhibit No. 95.)

(Newspaper Article, The Alabama Journal, captioned, "Governor Prepares Suit Against N.Y. Times", dated May 12, 1960, offered in evidence and identified as Defendant's Exhibit No. 96.)

[fol. 1986] (Newspaper Article, The Alabama Journal, captioned, "Another Times Act", dated May 13, 1960, offered in evidence and identified as Defendant's Exhibit No. 97.)

(Newspaper Article, The Alabama Journal, captioned, "N.Y. Times Retracts Parts of Statement", dated May 16, 1960, offered in evidence and identified as Defendant's Exhibit No. 98.)

(Newspaper Article, The Alabama Journal, captioned, "Patterson Seeks Advice On Retraction", dated May 17, 1960, offered in evidence and identified as Defendant's Exhibit No. 99.)

(Newspaper Article, The Alabama Journal, captioned, "Times Challenges Libel Suit Here", dated May 20, 1960, offered in evidence and identified as Defendant's Exhibit No. 100.)

(Newspaper Article, The Alabama Journal, captioned, "New York Times Asks Dismissal Of Libel Actions", dated May 27, 1960, offered in evidence and identified as Defendant's Exhibit No. 101.)

[fol. 1987] (Newspaper Article, The Alabama Journal, captioned, "Patterson Has To Read The Times", dated May 31, 1960, offered in evidence and identified as Defendant's Exhibit No. 102.)

(Newspaper Article, The Alabama Journal, captioned, "3 Officials Of Birmingham File Times Suit", dated May 31, 1960, offered in evidence and identified as Defendant's Exhibit No. 103.)

(Newspaper Article, The Alabama Journal, captioned, "Patterson Files Suit; Claims Libel Of Million," dated May 30, 1960, offered in evidence and identified as Defendant's Exhibit No. 104.)

(Newspaper Article, The Alabama Journal, captioned, "Times Told To Show Records", dated June 30, 1960, offered in evidence and identified as Defendant's Exhibit No. 105.)

(Newspaper Article, The Alabama Journal, captioned, "Flagrant Errors About South", dated June 24, 1960, offered in evidence and identified as Defendant's Exhibit No. 106.)

[fol. 1988] (Newspaper Article, The Alabama Journal, captioned, "Alabama! Alabama! Wherefore Art Thou?" dated June 2, 1960, offered in evidence and identified as Defendant's Exhibit No. 107.)

(Newspaper Article, The Alabama Journal, captioned, "City Fathers Seeking Back Issues of Times", dated June 8, 1960, offered in evidence and identified as Defendant's Exhibit No. 108.)

(Newspaper Article, The Alabama Journal, captioned, "Times Requests Libel Dismissal In Jefferson", dated June 14, 1960, offered in evidence and identified as Defendant's Exhibit No. 109.)

(Newspaper Article, The Alabama Journal, captioned, "King Ad Netted About $7,000", dated June 16, 1960, offered in evidence and identified as Defendant's Exhibit No. 110.)

(Newspaper Article, The Alabama Journal, captioned, "Time Puts Vandy In Alabama", dated June 24, 1960, offered in evidence and identified as Defendant's Exhibit No. 111.)

[fol. 1989] (Newspaper Article, The Alabama Journal, captioned, "Justice In Alabama", dated June 1, 1960, offered in evidence and identified as Defendant's Exhibit No. 112.)

(Newspaper Article, The Alabama Journal, captioned, "Birmingham Officer Sues N.Y. Times", dated July 20, 1960, offered in evidence and identified as Defendant's Exhibit No. 113.)

(Newspaper Article, The Alabama Journal, captioned, "State Has No Jurisdiction in Libel Suit, Times Says", dated July 25, 1960, offered in evidence and identified as Defendant's Exhibit No. 114.)

(Newspaper Article, The Alabama Journal, captioned, "200 Times Stories About Alabama Put Into Evidence In Court", dated July 26, 1960, offered in evidence and identified as Defendant's Exhibit No. 115.)

(Newspaper Article, The Alabama Journal, captioned, "Times Hearing On Libel Suit In Third Day", dated July 27, 1960, offered in evidence and identified as Defendant's Exhibit No. 116.)

[fol. 1990] (Newspaper Article, The Alabama Journal, captioned, "Important Precedent At Stake In Times Case Before Jones", dated July 28, 1960, offered in evidence and identified as Defendant's Exhibit No. 117.)

(Newspaper Article, The Alabama Journal, captioned, "Jones Hears Arguments In N Y Times Suit", dated August 1, 1960, offered in evidence and identified as Defendant's Exhibit No. 118.)

(Newspaper Article, The Alabama Journal, captioned, "Tempers Flare At Times Hearing", dated July 27, 1960, offered in evidence and identified as Defendant's Exhibit No. 119.)

(Newspaper Article, The Alabama Journal, captioned, "N.Y. Times Can Be Sued By Alabama", dated August 6, 1960, offered in evidence and identified as Defendant's Exhibit No. 120.)

(Newspaper Article, The Alabama Journal, captioned, "Times Writer Called To Testify At Bessemer", dated August 25, 1960, offered in evidence and identified as Defendant's Exhibit No. 121.)

[fol. 1991] (Newspaper Article, The Alabama Journal, captioned, "Where The Damage Is Done," dated August 8, 1960, offered in evidence and identified as Defendant's Exhibit No. 122.)

(Newspaper Article, The Alabama Journal, captioned, "Times Asks Dismissal Of B'ham. Suits", dated August 3, 1960, offered in evidence and identified as Defendant's Exhibit No. 123.)

(Newspaper Article, The Alabama Journal, captioned, "Some Is Unfit", dated September 5, 1960, offered in evidence and identified as Defendant's Exhibit No. 124.)

(Newspaper Article, The Alabama Journal, captioned, "Rowdy South", dated September 3, 1960, offered in evidence and identified as Defendant's Exhibit No. 125.)

(Newspaper Article, The Alabama Journal, captioned, "U.S. Court Rules Times Suits Can Be Tried In State Courts", dated September 2, 1960, offered in evidence and identified as Defendant's Exhibit No. 126.)

[fol. 1992] (Newspaper Article, The Alabama Journal, captioned, "State Can Try N.Y. Times Suits", dated September 3, 1960, offered in evidence and identified as Defendant's Exhibit No. 127.)

(Newspaper Article, The Alabama Journal, captioned, "Cleric Decides To Testify On Race Incidents", dated September 2, 1960, offered in evidence and identified as Defendant's Exhibit No. 128.)

(Newspaper Article, The Alabama Journal, captioned, "Rev. Hughes Reappears Before Jury," dated September 6, 1960, offered in evidence and identified as Defendant's Exhibit No. 129.)

(Newspaper Article, The Alabama Journal, captioned, "Cleric Appeals To Hugo Black", dated September 3, 1960, offered in evidence and identified as Defendant's Exhibit No. 130.)

(Newspaper Article, The Alabama Journal, captioned, "Jailed Minister Seeking Freedom: Jury Back Today", dated September 6, 1960, offered and identified as Defendant's Exhibit No. 131.)

[fol. 1993] (Newspaper Article, The Alabama Journal, captioned, "Methodists Send Hughes To Africa", dated September 10, 1960, offered in evidence and identified as Defendant's Exhibit No. 132.)

(Newspaper Article, The Alabama Journal, captioned, "N. Y. Times To Appeal Ruling On State Suits", dated September 9, 1960, offered in evidence and identified as Defendant's Exhibit No. 133.)

(Newspaper Article, The Alabama Journal, captioned, "Deep Trouble Seen For Demos In South", dated September 7, 1960, offered in evidence and identified as Defendant's Exhibit No. 134.)

(Newspaper Article, The Alabama Journal, captioned, "Salisbury Is Indicted For Times Articles", dated September 7, 1960, offered in evidence and identified as Defendant's Exhibit No. 135.)

(Newspaper Article, The Alabama Journal, captioned, "Times Loses Bid To Delay Libel Suit", dated September 21, 1960, offered in evidence and identified as Defendant's Exhibit No. 136.)

[fol. 1994] (Newspaper Article, The Alabama Journal, captioned, "Times Ruling Appeal Slated", dated September 27, 1960, offered in evidence and identified as Defendant's Exhibit No. 137.)

(Newspaper Article, The Alabama Journal, captioned, "Times Loses Attempt To Throw Out Suit", dated October 29, 1960, offered in evidence and identified as Defendant's Exhibit No. 138.)

(Newspaper Article, The Alabama Journal, captioned, "Libel Suits", dated October 19, 1960, offered in evidence and identified as Defendant's Exhibit No. 139.)

(Newspaper Article, The Alabama Journal, captioned, "City's Libel Claims Attacked By Times", dated October 28, 1960, offered in evidence and identified as Defendant's Exhibit No. 140.)

(Newspaper Article, The Alabama Journal, captioned, "Times Libel Trial Begins Tuesday", dated October 31, 1960, offered in evidence and identified as Defendant's Exhibit No. 141.)

[fol. 1995] (Newspaper Article, The Alabama Journal, captioned, "L. B. Sullivan Testifies In Times Suit", dated November 2, 1960, offered in evidence and identified as Defendant's Exhibit No. 142.)

(Newspaper Article, The Alabama Journal, captioned, "Opposing Sides Give Final Arguments In Times Libel Suit", dated November 3, 1960, offered in evidence and identified as Defendant's Exhibit No. 143.)

(Newspaper Article, The Alabama Journal, captioned, "Jan. 14 Hearing Set For New Trial Bid", dated December 17, 1960, offered in evidence and identified as Defendant's Exhibit No. 144.)

(Newspaper Article, The Alabama Journal, captioned, "Courtroom Segregated In Times Suit", dated February 1, 1961, offered in evidence and identified as Defendant's Exhibit No. 145.)

(Newspaper Article, The Alabama Journal, captioned, "Arguments In Times Case Postponed", dated January 13, 1961, offered in evidence and identified as Defendant's Exhibit No. 146.)

[fol. 1996] (Newspaper Article, The Alabama Journal, captioned, "Judge Denies Another Trial To 4 Negroes", dated January 18, 1961, offered in evidence and identified as Defendant's Exhibit No. 147.)

(Newspaper Article, The Alabama Journal, captioned, "Negroes Integrate Circuit Courtroom", dated January 31,

1961, offered in evidence and identified as Defendant's Exhibit No. 148.)

(Newspaper Article, The Alabama Journal, captioned, "Delay Is Denied In Times Trial", dated January 30, 1961, offered in evidence and identified as Defendant's Exhibit No. 149.)

(Newspaper Article, The Alabama Journal, captioned, "Times Libel Suit Looms By Sellers", dated February 9, 1961, offered in evidence and identified as Defendant's Exhibit No. 150.)

(Newspaper Article, The Alabama Journal, captioned, "Negroes Ask Out of $1 Million Bond", dated February 4, 1961, offered in evidence and identified as Defendant's Exhibit No. 151.)

[fol. 1997] (Newspaper Article, The Alabama Journal, captioned, "Orders To Seize Property Issued", dated February 6, 1961, offered in evidence and identified as Defendant's Exhibit No. 152.)

(Newspaper Article, The Alabama Journal, captioned, "Right Of Notification Given Lawyer In N Y Times Case", dated February 11, 1961, offered in evidence and identified as Defendant's Exhibit No. 153.)

(Newspaper Article, The Alabama Journal, captioned, "Cleric's Car To Be Sold At Auction", dated February 13, 1961, offered in evidence and identified as Defendant's Exhibit No. 154.)

(Newspaper Article, The Alabama Journal, captioned, "4 Negroes File Suit", dated February 13, 1961, offered in evidence and identified as Defendant's Exhibit No. 155.)

(Newspaper Article, The Alabama Journal, captioned, "Jurors Selected For Times Suit", dated November 1, 1960, offered in evidence and identified as Defendant's Exhibit No. 156.)

[fol. 1998] (Newspaper Article, The Alabama Journal, captioned "L. B. Sullivan Testifies In Times Suit", dated November 2, 1960, offered in evidence and identified as Defendant's Exhibit No. 157.)

(Newspaper Article, The Alabama Journal, captioned, "Must Stick To The Truth", dated November 4, 1960, offered in evidence and identified as Defendant's Exhibit No. 158.)

(One Roll of Film, offered to the proposed testimony of Lee Allen Ford, is uncopiable and in compliance with Title 7, Section 827 (1), will be attached to this Record as a part thereof and certified to by the Clerk of the Circuit Court. This roll of film is identified as Defendant's Exhibit No. 159.)

(One W.C.O.V. Television Script, dated November 3, 1960, offered in evidence and identified as Defendant's Exhibit No. 160.)

[fol. 1992] Mr. MacLeod: Now, Your Honor, we offer to call to the witness stand Lee Allen Ford as a witness for The New York Times in support of its Motion For A New Trial in the case of Sullivan against The New York Times Company and others.

Mr. Nachman: If the testimony they propose to introduce by Mr. Ford is about the television programs, then we object to it on the same grounds previously assigned.

The Court: Is that the purpose of this evidence?

Mr. MacLeod: Yes, Your Honor.

The Court: I think the objection is good.

Mr. MacLeod: We propose to show the activities of the television photographer in the court room, Your Honor.

The Court: I think the objection is good.

Mr. Embry: We except.

Mr. MacLeod: Your Honor, at this time we offer to prove by the Witness, Lee Allen Ford, that he is an employee—and at the time of the trial of this case before the jury—that he was an employee of a local television station designated as W.C.O.V. which is located in Montgomery, Alabama which broadcasts over this county and that on the 3rd day of November during the trial of this case that the witness, Lee Allen Ford, was in the Court Room while the trial of this case was in progress and while the jury was in the jury box and that during that time he took in the presence of the jury and within the Court Room moving

pictures of the trial in progress including the participants in the trial and by that, I mean, the parties and the attorneys and the Judge and also including the jury in the box and that at the conclusion of the Judge's Charge to the Jury as the jury was returning to the Jury Room to begin their deliberations that the witness came inside the rail of the Court room and followed the jury toward the jury room taking pictures of the individual jurors as they went into the jury room to deliberate, and we offer to show by the witness that these films that were taken in the Court Room were broadcast over television in Montgomery and we offer to prove by the witness that this roll of film which I will ask the Court Reporter to mark as an exhibit was taken in [fol. 2000] the court room during the progress of this trial and was later shown over television station W.C.O.V. in Montgomery and the surrounding communities. I will ask the Court Reporter to identify this roll of film as Defendant's Exhibit No. 159 on the Motion for a new trial. We offer to further prove by the witness that this group of papers clipped together here which I will ask the Court Reporter to mark and identify as Defendant's Exhibit No. 160 now for identification. This is the text of the script of the statements that were made over television accompanying the showing of the television pictures which have just been introduced—offered to be introduced—as Defendant's Exhibit No. 159.

The Court: What was the date of that showing?

Mr. MacLeod: That was the 3rd of November, Your Honor. The 3rd of November, 1960.

Mr. Nachman: Does it fix the hour?

Mr. MacLeod: I don't know whether we have that or not. Your Honor, this script was on a news broadcast between six and six-fifteen. We further offer to show by the witness that during the progress of the trial, on the first two days of the trial, that there were television broadcasts over station W.C.O.V. about the trial and the events taking place there. Now, Your Honor, we would like to make a further offer of proof in connection with this Motion. I offer to prove by my own testimony, and this is part of the Record, that—

The Court: Is this on 182 or 183?

Mr. MacLeod: It is on 183, Your Honor. That during the course of the Voir Dire examination of the jury prior to the time of striking the jury, that a large number of the venire stated that they had read about the case and about the advertisement that was the basis of the suit in the local newspapers.

Mr. Baker: That's already part of the Record, Your Honor.

Mr. Nachman: We have asked the Court Reporter, Your Honor, to transcribe all of the Voir Dire examination of the jurors for incorporation into the Record and I assume [fol. 2001] that will cover all of the statement of the jurors.

Mr. MacLeod: I further offer to prove by my own testimony that during the trial of the cause that within the railing of the court room which separates the portion of the court room from where the audience sits and the place where the actual trial—

The Court: That is the Bar of the Court.

Mr. MacLeod: The Bar of the Court then, Your Honor.

The Court: The Bar of the Court.

Mr. MacLeod: Well, within the Bar of the Court there was a table placed at which during the entire conduct of the trial there were several news reporters and photographers and that that table was, as I said, within the Bar of the Court and in plain view of the jury at all times.

Mr. Baker: Your Honor, this whole thing amazes me to hear The New York Times newspaper objecting to publicity by a newspaper—

Mr. MacLeod: Your Honor, we made the offer of proof as to Lee Allen Ford and I don't believe we have a ruling on that.

The Court: What do you want to prove by him?

Mr. MacLeod: I have stated, Your Honor, that he is the man who was the television photographer—

The Court: Well, I thought I gave a ruling on that. Your offer to prove comes too late. It should have been raised before.

Mr. MacLeod: Does Your Honor sustain the plaintiff's objection—

The Court: I sustain the objection to his testimony along that line. Now, that's on 182—

Mr. MacLeod: That's on 182 and 183 both, Your Honor. We except to that ruling of the Court.

(One roll of film, offered in evidence to the proposed testimony of Lee Allen Ford and identified as Defendant's Exhibit No. 159, is uncopiable and in compliance with Title 7, Section 827 (1) will be attached to this Record as part thereof and certified to by the Clerk of the Circuit Court.)

[fol. 2002] (Four Pages of Television Script, dated November 3, offered in evidence to the proposed testimony of Lee Allen Ford, and identified as Defendant's Exhibit No. 160.)

Mr. MacLeod: Now, Your Honor, I don't believe there was a ruling for the Record of the offer to prove in connection with my testimony about the jury and the table for the photographers and newspapermen inside the Bar of the Court.

Mr. Nachman: Again, Your Honor, there they were, in open Court, and as Mr. MacLeod says, inside the Bar. They made no objections to it. They must have been aware—

The Court: Well, I sustain the objection and let the Record note an exception.

Mr. MacLeod: We except, Your Honor.

Mr. Baker: I would like to ask a question, Your Honor.

The Court: Go ahead.

Mr. Baker: Does Mr. MacLeod have any objections to the press being here today? They are still here.

Mr. MacLeod: Now, Your Honor, I think Mr. Baker has gone beyond the realm of propriety. He is trying to—

The Court: Well, we will let the press sit there.

Mr. MacLeod: I think he well understands just why we have done this and what the import of our contention is in this, Your Honor.

The Court: Well, let's pass on to some of these other points now.

Mr. Nachman: Your Honor, Mr. Ford has pointed out to me that he is required by law to keep this film for a year and that he would like to have some arrangements made about getting it back.

The Court: Well, ask him if he won't keep that film subject to the orders of the Court.

[fol. 2003] Mr. MacLeod: Your Honor, we are going to have to have it. It is quite possible that it may have to be included in the transcript.

The Court: Well, couldn't we have a copy of it made? Can you make copies of those?

Mr. MacLeod: I don't know how you can make a copy of this, Your Honor.

The Court: How long does the law require these to be kept?

A Voice: One year, sir.

Mr. MacLeod: Your Honor, he would be fully protected if it is in the custody of this Court.

Mr. Baker: That film can be copied, Your Honor. It has been done before in a number of cases.

The Court: Well, you can get it copied and he can take that roll of film back with him.

Mr. MacLeod: That will be all right, Your Honor.

Mr. Embry: Your Honor, we would like to call Mr. John Mathews to the witness stand in connection with these same grounds. For the Record, he is the Clerk of the Circuit Court.

The Court: In what respect?

Mr. Embry: We want to offer to show from the records of the Court the size of the highest verdict that has ever been rendered in this county and the nature of the case in which it was returned and to further show by this witness that during the same week this case was tried that a verdict for $1,000 was rendered in this Court Room while we were trying this case in Judge Carter's Court Room in an action for the death of a human being.

Mr. Nachman: Your Honor, we object to that. It is highly improper and—

The Court: Well, it looks like that in order to do that we would have to go into the history of these things as to why the verdict was such and so and re-try the case. Of course, we are always enlightened by the testimony of the Clerk here but I don't believe he can give that sort of testimony.

[fol. 2004] Mr. Nachman: There have been verdicts for the defendant in death cases also, Your Honor, and—

The Court: Well, go ahead and state what you offer to show and let him object and I will rule on it.

Mr. Embry: We offer to show by Mr. Mathews that prior to the conclusion of the case of Sullivan against The New York Times and others that in this Court, during the same week, that a jury returned a verdict for a thousand dollars in a case involving the death of a human being and we offer to show by the witness the correct styling of the case and who the parties were.

The Court: Well, if they object, I think the objection is good.

Mr. Baker: We object, Your Honor.

The Court: I sustain the objection.

Mr. Embry: We except, Your Honor. We further offer to show by Mr. Mathews that the highest verdict rendered in this Court was in the case of Davis against the Johnson Publishing Company which was in the amount of $67,500 and we offer to show when that took place and the identity of the parties and the correct styling and number of the case which I am sure that Your Honor will take judicial knowledge of as it is a record of this Court.

Mr. Baker: We object to it, Your Honor.

The Court: I sustain the objection.

Mr. Embry: We except, Your Honor. That's all the evidence we have, Your Honor, and now I would like to say a few words to the Court in support of the Motion.

(At this point, argument was presented to the Court by Counsel for the Defendant, The New York Times Company, and replied to by Counsel for the Plaintiff, L. B. Sullivan.)

The Court: Mr. Reporter, note this for the Record. The Motion of the Defendant, The New York Times Company, a corporation, to set aside the verdict of the jury rendered in this case on November 3rd, 1960 and to grant this defendant a new trial now coming on regularly to be heard before [fol. 2005] the Court, the said Motion is argued by Counsel for the respective parties and submitted for decision by the Court and the Court does now take said Motion under consideration. Will that protect everybody's rights?

Mr. Embry: Yes, Your Honor. We would suggest that the Court Reporter write that up and that it should be attached to the Motion or written on it.

The Court: Yes. That's what we are going to do. It is in the Record now, anyway.

Mr. Embry: That's all we have, Your Honor.

Lawyer Crawford: Will you hear us, Your Honor?

The Court: What is that?

Lawyer Crawford: Will you hear us, please?

The Court: Well, that matter is not set for today, is it?

Lawyer Crawford: Well, Your Honor, we would like to make a brief statement on that Motion.

The Court: On what?

Lawyer Crawford: We would like to make a brief statement on the Motion For A New Trial in the Sullivan case.

The Court: Well, the other Motion is not set at this time, is it?

Mr. Baker: Mr. Reporter, let the Record show that we withdraw—

The Clerk: That Motion is dead.

Lawyer Crawford: Would the Court hear a brief statement about that Motion?

The Court: I don't see any necessity of hearing it if it is dead.

Lawyer Crawford: Well, is there a ruling on that, Your Honor?

The Court: The law rules on it.

Mr. Nachman: Your Honor was asked to rule on it as a matter of fact. Fred Gray was in the case and you ruled [fol. 2006] on it as I understand it. Isn't that correct, Mr. Mathews?

The Clerk: Well, he never did make a ruling on it. The Court told him it was dead as a matter of law.

The Court: Well, if it is dead under the law, I can't bring it back to life now.

Lawyer Crawford: Well, will the Court indulge us for about thirty seconds?

The Court: What do you want to be indulged about?

Lawyer Crawford: It will take only a minute, Your Honor—

Mr. Nachman: Your Honor, before we get into that, it

was my understanding that there was to be some proceedings in the Parks case. I understand that was to be heard today. As I understand it there were some other matters set for today and these gentlemen from Birmingham were to be here for the drawing of the jurors—

The Clerk: It was set at 12 o'clock and it's that time now—

The Court: Well, I don't want to hear you at this time because I have to go into this other matter now. Bring the jury box in here.

Lawyer Crawford: I don't mean to be contentious, Your Honor, but—

The Court: Let me get through drawing the jury and then I will see what I can do.

[fol. 2006a] Reporter's Certificate to foregoing transcript (omitted in printing).

[fol. 2011]

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

MOTION OF DEFENDANT'S, THE NEW YORK TIMES COMPANY, A CORPORATION, MOTION FOR NEW TRIAL—Filed December 1, 1960

Comes the defendant, The New York Times Company, a corporation, in the above styled cause and moves the Court to set aside the verdict of the jury of November 3, 1960, heretofore returned in said cause and the judgment rendered thereon in said cause and to grant unto this defendant a new trial, and as grounds for said motion said defendant sets down and assigns, separately and severally, the following, to-wit:

1. For that the court erred in entering its order of judgment of the 9th day of June, 1960, requiring this defendant to produce the books and documents and other writings specified in plaintiff's motion to produce theretofore filed in said cause.

2. For that the court erred in entering its order or judgment of the 5th day of August, 1960, denying the motion of

this defendant as amended to quash service of process upon it in this cause.

3. For that the court erred in failing or refusing to quash service of process upon this defendant had upon one Don McKee in this cause.

4. For that the court erred in failing or refusing to quash service of process upon this defendant had upon one John Chadwick in this cause.

5. For that the court erred in failing or refusing to quash service of process upon this defendant had under the provisions of Title 7, Sec. 199 (1) in this cause.

6. For that the court erred in entering its order or judgment of the 5th day of August, 1960, holding that this defendant was "doing business" in Alabama at the time of the purported service of process upon it.

7. For that the court erred in entering its order or judgment of the 5th day of August, 1960, in holding that this defendant had waived its limited appearance in this cause and had entered a general appearance in said cause.

8. For that the court erred in its order or judgment of the 5th day of August, 1960, in holding that this cause of action is an incident to the conduct of business in Alabama by this defendant.

9. For that the court erred in holding that the provisions of Title 7, Section 199 (1) are applicable to the facts of this cause so as to subject this defendant to service of process thereunder in this cause.

10. For that the court erred in its order or judgment of the 5th day of August, 1960, in failing to grant this defendant's motion to quash service of process upon it.

11. For that the court erred in entering its order or judgment of the 20th day of September, 1960, denying this defendant's objections to interrogatories propounded to it [fol. 2012] by the plaintiff.

12. For that the Court erred in entering its order or judgment of the 20th day of September, 1960, requiring

this defendant to make answer to the interrogatories propounded to it by the plaintiff.

13. For that the court erred in overruling this defendant's demurrers and additional demurrers to plaintiff's complaint in this cause.

14. For that the court erred in overruling this defendant's demurrers to plaintiff's complaint in said cause.

15. For that the court erred in overruling this defendant's additional demurrers to plaintiff's complaint in this cause.

16. For that the court erred in overruling this defendant's demurrers to Count One of plaintiff's complaint in this cause.

17. For that the court erred in overruling this defendant's additional demurrers to Count One of plaintiff's complaint in this cause.

18. For that the Court erred in overruling this defendant's demurrers to Count Two of plaintiff's complaint in this cause.

19. For that the court erred in overruling this defendant's additional demurrers to Count Two of plaintiff's complaint in this cause.

20. For that the court erred in overruling the demurrers as amended by the additional grounds assigned of this defendant to the plaintiff's complaint in this cause.

21. For that the Court erred in overruling defendant's demurrer as amended by the assignment of additional grounds to Count One of plaintiff's complaint in this cause.

22. For that the court erred in overruling defendant's demurrers as amended by the assignment of additional grounds to Count Two of plaintiff's complaint in this cause.

23. For that the court erred in sustaining demurrers to defendant's Plea One.

24. For that the court erred in sustaining demurrers to defendant's Plea Two.

25. For that the court erred in sustaining demurrers to defendant's Plea Three.

26. For that the court erred in sustaining demurrers to defendant's Plea Four.

27. For that the court erred in sustaining demurrers to defendant's Plea Five.

28. For that the court erred in sustaining demurrers to defendant's Plea Six.

[fol. 2013] 29. The court erred in permitting plaintiff's interrogatories and the answers of the defendant, The New York Times Company, a corporation, thereto which was plaintiff's Exhibit No. 348 to be sent out as an Exhibit with the jury to have before them in their deliberation after the same had been read into the evidence, to which action of the court this defendant duly and legally objected, and upon said objection being overruled by the court, to which this defendant duly and legally excepted.

30. For that the court erred in its oral charge to the jury wherein the court instructed the jury as follows:

"Now, the court is of the opinion and so charges you, gentlemen of the jury, that the matter complained of in plaintiff's Exhibit No. 347, that's the controversial ad which you will have before you, and parts of which are set out in the counts here in the complaint, belongs to that class of defamation called in law libel per se."

to which portion of the court's oral charge this defendant duly and legally excepted.

31. For that the court erred in its oral charge to the jury wherein the court instructed the jury as follows:

"We can say, as part of the law in this case, that a publication is libelous per se when they are such as to degrade the plaintiff in the estimation of his friends and the people of the place where he lives, as injure him in his public office or impute misconduct in his office, or want of official integrity or want of fidelity to a public trust or such as will subject the plaintiff to ridicule of public distrust. All those kind of charges are called libelous per se."

to which portion of such oral charge of the court this defendant duly and legally excepted.

32. For that the court erred in refusing to give the following written instructions to the jury in this cause at the request of this defendant, The New York Times Company, a corporation:

"T.1. I charge you, gentlemen of the jury, that the advertisement complained of in plaintiff's complaint is not libelous per se, that is to say, the same is not libelous as a matter of law." Refused, Jones, Judge.

33. For that the court erred in refusing to give the following written instructions to the jury in this cause at the request of this defendant, The New York Times Company, a corporation:

"T.2. I charge you, gentlemen of the jury, that the advertisement complained of in plaintiff's complaint is not libelous as a matter of law, and if, after reading that advertisement, you find that it was not degrading and would not tend to injure the plaintiff's reputation, then I further [fol. 2014] charge you that such advertisement is not in fact libelous and in that event your verdict must be for the defendant, The New York Times Company, a corporation." Refused, Jones, Judge.

34. For that the court erred in refusing to give the following written instructions to the jury in this cause at the request of this defendant, The New York Times Company, a corporation:

"T.3. I charge you, gentlemen of the jury, that if you are reasonably satisfied from the evidence that the publication complained of by plaintiff in his complaint is false, then I further charge you that not every false publication is libelous as a matter of law, and that to make such publication libelous you must further find from the evidence that by reading such publication and giving to the words contained therein their natural and ordinary meaning, that the same is degrading, and would tend to injure the plaintiff's reputation by imputing to him some incapacity or lack of due qualification to fill the public office held by plaintiff or

by imputing to him some positive past misconduct which injuriously affects him in his public office or the holding of principles which are hostile to the maintenance of government." Refused, Jones, Judge.

35. For that the court erred in refusing to give the following written instructions to the jury in this cause at the request of this defendant, The New York Times Company, a corporation:

"T.4. I charge you, gentlemen of the jury, that if you are reasonably satisfied from the evidence that the publication complained of by plaintiff in his complaint is false, then I further charge you that not every false publication is libelous as a matter of law, and that to make such publication libelous you must further find from the evidence that by reading such publication and giving to the words contained therein their natural and ordinary meaning that the same is degrading and would tend to injure the plaintiff's reputation by imputing gross negligence, dishonesty or other impropriety in the discharge of his official duties." Refused, Jones, Judge.

36. For that the Court erred in refusing to give the following written instructions to the jury in this cause at the request of this defendant, The New York Times Company, a corporation:

"T.5. I charge you, gentlemen of the jury, that in determining whether the advertisement complained of in plaintiff's complaint was libelous per se or libelous as a matter of law, you must find the evidence that damage to plaintiff's reputation would follow as a natural and probable result of the publication of said advertisement, and in this connection it must be kept in mind that the damage claimed and with which you, the jury, are primarily concerned is injury to reputation; and I further charge you that in the [fol. 2015] absence of such injury, even if you find from the evidence that the advertisement caused plaintiff notoriety and embarrassment, your verdict must be for the defendant, The New York Times Company, a corporation." Refused, Jones, Judge.

37. For that the court erred in refusing to give the following written instructions to the jury in this cause at the request of this defendant, The New York Times Company, a corporation:

"T.8. I charge you, gentlemen of the jury, that there is no evidence in this case that plaintiff has sustained any substantial damage, and I further charge you that in the event you find the issues in favor of the plaintiff, your verdict should be for nominal damages only." Refused, Jones, Judge.

38. For that the court erred in refusing to give the following written instructions to the jury in this cause at the request of this defendant, The New York Times Company, a corporation:

"T.9. I charge you, gentlemen of the jury, that if, in your consideration of this case under the evidence, you arrive at a consideration of whether or not the plaintiff is entitled to compensatory damages, then I further charge you that under the law your award for such compensatory damages should be such damages as you find from the evidence were directly and proximately caused to the plaintiff by the publication of the advertisement sued upon insofar as such advertisement related to the plaintiff." Refused, Jones, Judge.

39. For that the court erred in refusing to give the following written instructions to the jury in this cause at the request of this defendant, The New York Times Company, a corporation:

"T.10. I charge you, gentlemen of the jury, if you find from the evidence, that the advertisement complained of in plaintiff's complaint concerned the plaintiff, and if you further find from the evidence that such advertisement injured the plaintiff's feelings, but did not and could not injure his reputation, then I charge you that your verdict must be for the defendant, The New York Times Company, a corporation". Refused, Jones, Judge.

40. For that the court erred in refusing to give the following written instructions to the jury in this cause

at the request of this defendant, The New York Times Company, a corporation:

"T.11. I charge you, gentlemen of the jury, that before you are authorized to award substantial compensatory damages to the plaintiff, you must find from the evidence in this case that the plaintiff suffered substantial injury as a result of the publication by the defendant, The New York Times Company, a corporation, of the advertisement complained of by plaintiff in his complaint." Refused, Jones, Judge.

[fol. 2016] 41. For that the court erred in refusing to give the following written instructions to the jury in this cause at the request of this defendant, The New York Times Company, a corporation:

"T.15. I charge you, gentlemen of the jury, if you find from all the evidence that the advertisement complained of by the plaintiff was libelous per se but that plaintiff has sustained no actual injury, then I charge you that your verdict may be for nominal damages." Refused, Jones, Judge.

42. For that the court erred in refusing to give the following written instructions to the jury in this cause at the request of this defendant, The New York Times Company, a corporation:

"T.16. I charge you, gentlemen of the jury, if you should find from all the evidence that the advertisement complained of by plaintiff was libelous per se but that plaintiff has sustained no actual injury in his office, profession, trade, or business by reason of the publication of the advertisement complained of in plaintiff's complaint, then I further charge you that your verdict may be for nominal damages." Refused, Jones, Judge.

43. For that the court erred in refusing to give the following written instructions to the jury in this cause at the request of this defendant, The New York Times Company, a corporation:

"T.18. I charge you, gentlemen of the jury, that punitive damages, as the name indicates, are designed to punish the defendant, The New York Times Company, a corpora-

tion, and the other defendants in this case, for the publication of the advertisement complained of, and I further charge you that punitive damages may be awarded only in the event that you, the jury, are convinced by a fair preponderance of the evidence that the defendant, The New York Times Company, a corporation, in publishing the matter complained of was motivated by personal ill will, that is actual intent to do the plaintiff harm, or that the defendant, The New York Times Company, a corporation, was guilty of gross negligence and recklessness and not of just ordinary negligence or carelessness in publishing the matter complained of so as to indicate a wanton disregard of plaintiff's rights." Refused, Jones, Judge.

44. For that the court erred in refusing to give the following written instructions to the jury in this cause at the request of this defendant, The New York Times Company, a corporation:

"T.22. I charge you, gentlemen of the jury, that if you believe the evidence in this case, you cannot find a verdict in favor of the plaintiff and against the defendant, The New York Times Company, a corporation." Refused, Jones, Judge.

45. For that the court erred in refusing to give the following written instructions to the jury in this cause at the [fol. 2017] request of this defendant, The New York Times Company, a corporation:

"T.23. I charge you, gentlemen of the jury, that if you believe the evidence in this case you cannot find a verdict in favor of the plaintiff and against the defendant, The New York Times Company, a corporation, in this case under Count One of plaintiff's complaint." Refused, Jones, Judge.

46. For that the court erred in refusing to give the following written instructions to the jury in this cause at the request of this defendant, The New York Times Company, a corporation:

"T.24. I charge you, gentlemen of the jury, that if you believe the evidence in this case you cannot find a verdict in favor of the plaintiff and against the defendant, The New

York Times Company, a corporation, in this case under Count One of plaintiff's complaint as last amended." Refused, Jones, Judge.

47. For that the court erred in refusing to give the following written instructions to the jury in this cause at the request of this defendant, The New York Times Company, a corporation:

"T.25. I charge you, gentlemen of the jury, that if you believe the evidence in this case you cannot find a verdict in favor of the plaintiff and against the defendant, The New York Times Company, a corporation, in this case under Count Two of plaintiff's complaint." Refused, Jones, Judge.

48. For that the court erred in refusing to give the following written instructions to the jury in this cause at the request of this defendant, The New York Times Company, a corporation:

"T.26. I charge you, gentlemen of the jury, that if you believe the evidence in this case your verdict must be for the defendant, The New York Times Company, a corporation." Refused, Jones, Judge.

49. For that the court erred in refusing to give the following written instructions to the jury in this cause at the request of the defendant, The New York Times company, a corporation:

"T.27. I charge you, gentlemen of the jury, if you believe the evidence in this case your verdict must be for the defendant, The New York Times Company, a corporation, under Count One of the complaint." Refused, Jones, Judge.

50. For that the court erred in refusing to give the following written instructions to the jury in this cause at the request of this defendant, The New York Times Company, a corporation:

"T.28. I charge you, gentlemen of the jury, if you believe the evidence in this case your verdict must be for the defendant, The New York Times Company, a corporation, under Count Two of the complaint." Refused, Jones, Judge.

[fol. 2018] 51. For that the court erred in refusing to give the following written instructions to the jury in this cause at the request of this defendant, The New York Times Company, a corporation:

"T.35. I charge you, gentlemen of the jury, that there is no evidence in this case from which it appears that the plaintiff was referred to in the advertisement published by defendant New York Times Company and therefore your verdict must be for the defendant New York Times Company." Refused, Jones, Judge.

52. For that the court erred in refusing to give the following written instructions to the jury in this cause at the request of this defendant, The New York Times Company, a corporation:

"T.36. I charge you, gentlemen of the jury, that the words complained of by the plaintiff in his complaint in the advertisement published by the defendant New York Times Company in its newspaper must be considered in connection with the facts and circumstances in reference to which the words were used; and I further charge you that these facts and circumstances may take from the words any import of reflection on the ability and integrity of the plaintiff in his office, trade, business, or profession, in which case the words used in the advertisement complained of would not be libelous." Refused, Jones, Judge.

53. For that the court erred in refusing to give the following written instructions to the jury in this cause at the request of this defendant, The New York Times Company, a corporation:

"T.46. I charge you, gentlemen of the jury, that if you believe the evidence you cannot return a verdict in favor of the plaintiff and against the defendant, The New York Times Company, a corporation for compensatory damages." Refused, Jones, Judge.

54. For that the court erred in refusing to give the following written instructions to the jury in this cause at the request of this defendant, The New York Times Company, corporation:

"T.47. I charge you, gentlemen of the jury, that there has been no evidence introduced of any actual damage to the plaintiff". Refused, Jones, Judge.

55. For that the court erred in refusing to give the following written instructions to the jury in this cause at the request of this defendant, The New York Times Company, a corporation:

"T.48. I charge you, gentlemen of the jury, that there has been no evidence introduced upon which a verdict for compensatory damages could be based." Refused, Jones, Judge.

[fol. 2019] 56. For that the court erred in refusing to give the following written instructions to the jury in this cause at the request of this defendant, The New York Times Company, a corporation:

"T.59. I charge you, gentlemen of the jury, that if you return a verdict for the plaintiff and assess damages against one or more of the defendants, you must specify in your verdict what part of the damages are compensatory and what part of the damages are punitive as to each defendant against whom a verdict is returned." Refused, Jones, Judge.

57. For that the court erred in refusing to give the following written instructions to the jury in this cause at the request of this defendant, The New York Times Company, a corporation:

"T.60. I charge you, gentlemen of the jury, that if you believe from all the evidence in this case that the plaintiff is entitled to recover damages against one or more of the defendants in this case you may in your discretion, put your verdict as to such damages, if any, in the form of special findings; that is to say you may assess any punitive or compensatory damages separately, indicating in what amount each kind of damage is found and as to which defendant, if any, it is so found." Refused, Jones, Judge.

58. For that the court erred in refusing to give the following written instructions to the jury in this cause at

the request of this defendant, The New York Times Company, a corporation:

"T.63. I charge you, gentlemen of the jury, that if you find from all the evidence that the plaintiff is entitled to punitive damages from one or more of the defendants but not from one or more of the other defendants you must return a verdict in favor of all the defendants." Refused, Jones, Judge.

59. For that the court erred in denying the right of counsel for this defendant, The New York Times Company, a corporation, to examine the venire from which the jury for the trial of this case was selected on their voir dire, and in the following particular:

"I will ask you gentlemen even though at the close of this case that you may find a certain statement contained in the advertisement made the basis of the plaintiff's complaint in this case in his cause of action are not accurate or correct but the evidence discloses that the advertisement did not refer to the plaintiff, do you entertain any conviction, opinion or predisposition of mind which would compel you to return a verdict in favor of the plaintiff or which would prevent your returning a verdict in favor of the defendant, The New York Times Company, a corporation?"

to which action of the court this defendant duly and legally excepted.

[fol. 2020] 60. For that the court erred in denying the right of counsel for this defendant, The New York Times Company, a corporation, to examine the venire from which the jury for the trial of this case was selected on their voir dire, and in the following particular:

"Have any of you gentlemen ever been a plaintiff in a law suit in this Court any number of times, that is to say, have you filed a suit seeking recovery of money from another person, firm, or corporation?"

to which action of the court this defendant duly and legally excepted.

61. For that the court erred in denying the right of counsel for this defendant, The New York Times Company, a corporation, to examine the venire from which the jury for the trial of this case was selected on their voir dire, and in the following particular:

"I will ask you gentlemen if at the close of the evidence in this case and the evidence shows that The New York Times Company was not actuated by malice in publishing this paid advertisement, would you refuse to award damages to punish The New York Times, that is to say, would you refuse to award punitive damages in this case?"

to which action of the court this defendant duly and legally excepted.

62. For that the court erred in denying the right of counsel for this defendant, The New York Times Company, a corporation, to examine the venire from which the jury for the trial of this case was selected on their voir dire, and in the following particular:

"Is there any reason, without disclosing that reason to me, that would tend to embarrass you or embarrass you in any way or cause you to hesitate to return a verdict in favor of The New York Times Company, a corporation, in this case?"

to which action of the court this defendant duly and legally excepted.

63. For that the court committed prejudicial error against the interest of The New York Times Company, a corporation, in over-ruling the objections of said defendant to the questions propounded to the witness, Grover C. Hall, Jr. on Direct Examination as follows:

"Q. I direct your attention to the third paragraph in the left hand column of that exhibit which is the paragraph beginning 'In Montgomery, Alabama, after students sang 'My Country 'Tis of Thee' on the State Capitol steps, their leaders were expelled from school, and truckloads of police armed with shotguns and tear-gas ringed the Alabama State College campus. When the entire student body protested to State authorities by refusing to re-register,

their dining hall was padlocked in an attempt to starve them into submission.' I ask you to look at that paragraph, if you will.

"A. Yes, Sir.

[fol. 2021] Q. You are familiar with it?

A. Yes.

Q. I will ask you, Mr. Hall, whether you associate the statements contained in that paragraph with any person or persons?

Mr. Embry: Go ahead and finish your question but don't answer it, Mr. Hall. Let me object to it before you answer.

Mr. Nachman: I am through.

Mr. Embry: Your Honor, we object to that question on the grounds that it invades the province of the jury and it calls for an ultimate inquiry into fact that the jury is to inquire into in this case and it is incompetent, irrelevant and immaterial and it calls for an undisclosed mental operation of this witness and it calls for an unauthorized mental conclusion on the part of this witness. The fact that he is asking about is a fact that is addressed entirely to the jury in this case. It is a fact for the jury to decide, Your Honor, We object to it on those grounds."

"Mr. Embry: Your Honor, I would like to add some other grounds.

The Court: Go ahead.

Mr. Embry: Your Honor, this is an attempt to substitute this witness' opinion for that of the jury. The jurors are the triers of fact in the case and it is what the jury associates from a reading of the article and not from the witness and I have an Alabama authority on that point, Your Honor, if you would like to see it.

The Court: Well, the way I read these cases here, they hold in some of these cases that it is permissible to ask the witness when you get him on the witness stand after he had read that article whether he understood it to refer to the plaintiff, that is, Sullivan here, and I think that would be admissible—

Mr. Embry: Your Honor, that's the Iowa case but we have an Alabama case.

The Court: Well, let me rule against you—it is a question of identification—let me rule against you and give you an exception.

Mr. Embry: We except, Your Honor."

* * * * * * *

"Q. You may answer the question, Mr. Hall.

A. Please re-state the question.

Q. Referring to the statements contained in the paragraph of the ad to which I referred you, do you associate those statements with any person or persons?

Mr. Embry: We make the same objections, Your Honor—

The Court: Same ruling.

[fol. 2022] Mr. Embry: We except.

The Witness: I think I would associate it with the City government—the Commissioners."

* * * * * * *

Q. The Commissioners of the City.

A. Yes, sir.

Q. Is that the City of Montgomery, Alabama?

A. Yes, sir.

Q. Now, if you believed the statements contained in that same paragraph to be true, Mr. Hall, would that belief affect your opinion or judgment of the persons so associated, and in this case, would it affect your judgment of the fitness of that person to hold the office of Commissioner?

Mr. Embry: We object to that question, Your Honor. It invades the province of the jury and it calls for an unauthorized conclusion on the part of this witness and for an undisclosed mental operation. It is speculative it invades the province of the jury and the question addressed to the witness is the question of ultimate inquiry of fact to be addressed to the jury in the case, if the Court please, and not the opinion of a person brought in here to testify what his impression is or what he thinks or what he speculates or how it might affect him if he believed it is pure speculation, if the Court please. It is a question of fact adduced from that witness stand as to what it may or may not have done—

Mr. Nachman: Your Honor, this matter was before you in the case of Johnson Publishing Company vs. Davis and a recent opinion by the Alabama Supreme Court in a separate opinion referred to this kind of testimony—

The Court: Well, I don't want to cut you short, but I think the question is good and you may have an exception.

Mr. Embry: We except, your Honor.

* * * * * * *

The Witness: Well, it states there about starving students into submission and starvation is an instrument of reprisal and would certainly be indefensible in my mind in any case.

Mr. Embry: Your Honor, we move that answer be stricken as not responsive to the question—

The Court: Motion denied.

Mr. Embry: We except."

to which action of the court this defendant duly and legally reserved an exception.

64. For that the court committed prejudicial error against the interest of The New York Times Company, a [fol. 2023] corporation, in over-ruling the objections of said defendant to the questions propounded to the witness, Arnold D. Blackwell, on Direct Examination as follows:

"Q. I direct your attention to the third paragraph on the left hand side of the article which reads as follows: "In Montgomery, Alabama, after students sang 'My Country 'Tis of Thee,' on the State Capitol steps, their leaders were expelled from school and truckloads of police armed with shotguns and tear-gas ringed the Alabama State College Campus. When the entire student body protested to state authorities by refusing to re-register, their dining hall was padlocked in an attempt to starve them into submission.' I ask you to look at that paragraph and read it and familiarize yourself with it.

Mr. Embry: Your Honor, while he is doing that may I inquire of the witness on Voir Dire as to when he saw this?

Mr. Nachman: We think that is a matter for cross-examination, Your Honor.

The Court: I don't believe you can ask that on Voir Dire.

Mr. Embry: Well, Your Honor, you certainly wouldn't permit him to testify about something if he didn't read it in the paper and if he hadn't seen it until it was shown to him by one of the attorneys for the plaintiff in this case—

The Court: I take it it would have to be read before the beginning of the trial, wouldn't it? It would have to be read before the beginning of the trial or before the suit was filed—

Mr. Embry: Well, Your Honor, that would be a publication of Mr. Nachman's and not a publication by this defendant.

Mr. Nachman: Your Honor, we think all of these things can be gone into on cross examination in an attempt to undermine the witness' testimony if they can do so—

The Court: Let me give you an exception to the Court's ruling.

Mr. Embry: Your Honor, may I make a statement?

The Court: Yes.

Mr. Embry: Your Honor, that would not be a publication upon the part of this defendant if Mr. Nachman went ahead and proffered it to someone who otherwise had not read it—

Mr. Nachman: We are not offering the testimony as a republication of a libel if that's what you are worried about.

The Court: You may have an exception.

Mr. Embry: We except."

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Q. Have you looked at it, Sir?

[fol. 2024] A. Yes, sir.

Q. Do the statements contained in that paragraph associate in your mind any person or group of persons?

Mr. Embry: Don't answer that question until we have an opportunity to object, please. We object, Your Honor, on the grounds that it invades the province of the jury and it calls for an undisclosed mental operation of the witness, it calls for an unauthorized conclusion on his part, and it goes to the question of the ultimate inquiry of fact before the

jury, that is to say, whether the advertisement complained of identifies any person or identifies the plaintiff in this cause which is a question of fact for these gentlemen sitting on the jury to determine and it is an attempt to substitute the judgment of the witness of his opinion for that of the jury and that there has been no proper predicate laid or foundation laid for asking of that question."

Mr. Nachman: Your Honor, may we stipulate that the same objections may be made to this question each time as propounded to this witness—

The Court: I will let the question in and hold that it is—

Mr. Embry: I have an exception, Your Honor, and can we have an understanding that the Court Reporter will write it in and write in these objections and any other additional grounds that I can think of—"

Q. Do the statements contained in that paragraph that I have just shown you—are they associated in your mind with any person or persons?

A. Yes, sir.

Q. With whom?

A. With the Police Commissioner and the police force. The people on the police force.

Q. Now, if you believed the statements in that paragraph to be correct, Mr. Blackwell, and true, would they affect your opinion of the Police Commissioner in any way?

Mr. Embry: We object to that question, if it please the court. It is calling for an unauthorized conclusion on the part of the witness, it again invades the province of the jury in determining the fact that that question called for, that is, whether any damages were suffered by the plaintiff and if there is a libelous statement—that's a fact for the jury to determine and it calls for a mental operation. It calls for the witness to determine a fact which is up to the jury here to determine—

The Court: I will let it in and give you an exception.

Mr. Embry: It is also incompetent, irrelevant and immaterial and if we may, Your Honor, we will have the same understanding as to our objections to this same type question whenever he asks that question and to whomever

he asks that question, if that is agreeable with counsel for the plaintiff.

[fol. 2025] Mr. Nachman: It is agreeable, Your Honor, and as Mr. Baker said, we made the stipulation in order to avoid a repetition of grounds each time the question is asked.

Mr. Embry: This is not the same question as the last question.

Mr. Nachman: We will make the same stipulation in regard to any of them, Mr. Embry.

Mr. Embry: All right. We just want the Record to be right, Your Honor.

* * * * * * *

"Q. You may answer that question too, Mr. Blackwell. If you believed the statements contained in that paragraph to be true and correct, would that belief affect your opinion of the plaintiff in any way?

A. Yes, sir, it would.

Q. In what way, sir?

A. Well, if it were true that "When the entire student protested to state authorities by refusing to re-register, their dining hall was padlocked in an attempt to starve them into submission, I would think that the people on our police force or the heads of our police force were acting without their jurisdiction and would not be competent for the position.

Q. Now, Mr. Blackwell, I call your attention to this paragraph in the second column which reads as follows. "Again and again the Southern violators have answered Dr. King's peaceful protests with intimidation and violence. They have bombed his home almost killing his wife and child. They have assaulted his person. They have arrested him seven times—for speeding, loitering, and similar 'offenses', And now they have charged him with 'perjury'—a felony under which they could imprison him for ten years.' I ask you there whether those statements associate themselves in your mind with any person or persons?

Mr. Embry: Don't aswer the question yes. We have the same objections and grounds, Your Honor.

The Court: Yes."

. . . . . .

The Witness: Which statements particularly?

By Mr. M. R. Nachman, Jr. (Continuing)

Q. I am referring to, 'Again and again the Southern violators have answered Dr. King's peaceful protests with intimidation and violence. They have bombed his home almost killing his wife and child. They have assaulted his person. They have arrested him seven times—for 'speeding', 'loitering' and similar 'offenses'. And now they have charged him with 'perjury'—a felony under which they could imprison him for ten years.' I refer to those state-[fol. 2026] ments, sir.

A. The last of the statements, 'They have arrested him seven times—for 'speeding,' 'Loitering' and similar 'offenses'. And now they have charged him with 'perjury' —a felony under which they could imprison him for ten years,' I associate those with the Police Department and with the Police Commissioner, assuming they are referring there to the Police Commissioner and the Police Department. Does that answer your question?

Q. Again, do those statements in that paragraph if you believed them to be true, would they affect your opinion of the Police Commissioner?

A. Yes, sir. They definitely would.

Q. The same way that you previously testified?

A. Yes. The same way I previously testified.

Q. All right, sir. That's all."

to which action of the court this defendant duly and legally reserved an exception.

65. For that the court committed prejudicial error against the interest of The New York Times Company, a Corporation, in over-ruling the objections of said defendant to the questions propounded to the witness, Harry W. Kaminsky, on Direct Examination as follows:

Q. I call your attention to the third paragraph in the left hand column which begins, 'In Montgomery, Alabama,

after students sang 'My Country, 'Tis of Thee' on the State Capitol steps, their leaders were expelled from school, and truckloads of police armed with shotguns and tear-gas ringed the Alabama State College Campus. When the entire student body protested to State authorities by refusing to re-register their dining hall was padlocked in an attempt to starve them into submission.'

A. Yes, sir.

Q. Are you familiar with the statement and matters contained in that paragraph? Do you want to familiarize yourself with it?

A. Yes, sir. I would like to look at it for a minute.

Q. Now, Mr. Kaminsky, do you associate the statements and material contained in that paragraph that I have just showed you with any person or persons?

Mr. Embry: Your Honor, may we have the same grounds of objection previously assigned—

The Court: Yes, and you may have your exception.

Mr. Embry: We except.

Lawyer Crawford: We have the same objection and exception, if the Court please.

Mr. Nachman: And anything that you may want to dic-
[fol. 2027] tate later into The Record.

The Court: Go ahead.

Mr. Nachman: You may answer.

The Witness: Yes, sir.

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Who are the person or persons with whom you associate the matters contained in that—

A. I would say the City Commissioner of Montgomery. The Commissioners.

Q. Would you include Mr. Sullivan?

A. Mr. L. B. Sullivan, yes.

Q. If you believed the statements contained in that paragraph to be correct, Mr. Kaminsky, would that affect in any way your opinion of the Police Commissioner?

Mr. Embry: Same objection and same exception, if the Court please.

The Court: Yes. Go ahead.
Lawyer Crawford: Same objection and exception.
The Witness: Yes, sir.

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. In what way would it affect it?

A. Well, if I believed that, I couldn't go along with that. If Mr. Sullivan would do a thing like that, I couldn't go along with his thinking.

Q. Now, I call your attention to the last paragraph in the second column of this ad, which begins, 'Again and again the Southern violators have answered Dr. King's peaceful protests with intimidation and violence. They have bombed his home almost killing his wife and child. They have assaulted his person. They have arrested him seven times—for 'speeding, 'loitering', and similar 'offenses'. And now they have charged him with 'perjury' a felony under which they could imprison him for ten years,' and I ask you to look at that and tell us whether you are familiar with the statements contained there? Just look at it.

A. Yes, sir.

Q. Now, I ask you the same question again, sir. Do you associate the matters contained in that paragraph with any person or persons?

A. Well, I would say that it refers to the same people in the paragraph that we looked at before.

Q. The Commissioners?

A. Yes, sir.

Q. Including Mr. Sullivan?

[fol. 2028] A. Yes, sir.

Q. Once again, sir, if you believed those statements to be true, would your opinion of the Commissioner be affected?

A. My answer would be the same.

Q. Your answer would be the same?

A. Yes, sir.

Q. All right, sir. That's all."

to which action of the court this defendant duly and legally reserved an exception.

66. For that the court committed prejudicial error against the interest of The New York Times Company, a corporation, in over-ruling the objections of said defendant to the questions propounded to the witness, H. M. Price, Sr., on Direct Examination as follows:

Q. Mr. Price, I show you plaintiff's Exhibit No. 347 which is an advertisement and I call your attention to the third paragraph down on the left hand column where it says 'In Montgomery, Alabama, after students sang 'My Country Tis of Thee' on the State Capitol steps, their leaders were expelled from school, and truckloads of police armed with shotguns and tear-gas ringed the Alabama State College Campus. When the entire student body protested to state authorities by refusing to re-register, their dininghall was padlocked in an attempt to starve them into submission.' I also call your attention to this paragraph: 'Again and again, the Southern violators have answered Dr. King's peaceful protests with intimidation and violence. They have bombed his home, almost killing his wife and child. They have assaulted his person. They have arrested him seven times—for 'speeding,' 'loitering' and similar 'offenses'. And now they have charged him with perjury—a felony under which they could imprison him for ten years.' Now, having looked at the ad, are you familiar with those?

A. I am familiar with them. Yes, sir.

Mr. Embry: For the Record, Your Honor, we have our same objections and exceptions?

The Court: Yes.

Lawyer Crawford: Same objection and exception.

The Court: Yes, go ahead.

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Mr. Price, did it—when you read the statements contained in those two paragraphs, do they associate themselves in your mind with any person? Those statements of events?

A. Certainly.

Q. With whom?

[fol 2029] A. I would say the head of the Police Department.

Q. Who is that?

A. Mr. L. B. Sullivan.

Q. Mr. Price, if you believed the statements contained in those two paragraphs to be true, regardless of whether you think them to be true, if you believed them to be true would that affect your opinion of Mr. Sullivan—

Mr. Embry: Same objections, if the Court please.

The Court: Yes, same ruling.

Mr. Embry: We except.

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The Witness: I don't think there is any question about what I would decide. I think I would decide that we probably had a young Gestapo in Montgomery.

Mr. Nachman: That's all.

Mr. Embry: Your Honor, we move that last answer be stricken as not responsive—

The Court: Well, a shorthand redention of an alleged fact probably—I will let it in and give you an exception.

Mr. Embry: We except.

Lawyer Gray: Same exception?

to which action of the court this defendant duly and legally reserved an exception.

67. For that the court committed prejudicial error against the interest of The New York Times Company, a corporation, in over-ruling the objections of said defendant to the questions propounded to the witness, William M. Parker, Jr. on Direct Examination as follows:

Q. I will ask you to look at these paragraphs and I will read them as follows: 'In Montgomery, Alabama, after students sang 'My Country, 'Tis of Thee' on the State Capitol steps, their leaders were expelled from school—and truckloads of police armed with shotguns and tear-gas ringed the Alabama State College Campus. When the entire student body protested to state authorities by refusing to re-register, their dining hall was padlocked in an attempt to starve them into submission,' and now this para-

graph, 'Again and again the Southern violators have answered Dr. King's peaceful protests with intimidation and violence. They have bombed his home almost killing his wife and child. They have assaulted his person. They have arrested him seven times—for 'speeding', 'loitering' and similar 'offenses.' They have charged him with perjury—a felony under which they could imprison him for ten years. Look at the contents of those paragraphs and refresh your [fol. 2030] recollection about them, if you will, sir.

Mr. Embry: Do we have the same objections about the same statement about who is associated in his mind and if he believed—

The Court: Yes.

Mr. Embry: The same objections and exceptions."

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The Court: Yes, Go ahead.

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Have you looked at them?

A. Yes, sir.

Q. Mr. Parker, do you associate those statements contained in those paragraphs with any person or persons that you know or are acquainted with?

A. Yes, sir.

Q. With whom?

A. All persons or just one person?

Q. Well, name a particular person.

A. I would the—I would associate them with Mr. Sullivan, Mr. James and Mr. Parks.

Q. They are the Commissioners of the City of Montgomery?

A. Yes, They are the Commissioners of the City of Montgomery.

Q. Mr. Parker, on the assumption that you believed those to be true, whether you do or not, but if you did believe them to be true, the statements I have just read, would that affect your opinion of Mr. Sullivan, and if so, state how.

A. Yes, it would.

Q. In what way?

A. It certainly would. I would think Mr. Sullivan would be trying to run this town with a strong-arm—strong-armed tactics, rather, going against the oath he took to run his office in a peaceful manner and an upright manner for all citizens of Montgomery."

to which action of the court this defendant duly and legally reserved an exception.

68. For that the verdict is contrary to law.

69. For that the verdict is contrary to law in that the amount of the damages is grossly excessive.

70. For that the verdict is contrary to law in that the evidence did not show that the Plaintiff suffered any actual damage.

71. For that the verdict is contrary to law in that the evidence did not show that the plaintiff suffered any substantial damage.

[fol. 2031] 72. For that the verdict is contrary to law in that the evidence did not show that the plaintiff suffered such actual damage as to justify the amount of the verdict.

73. For that the verdict is contrary to law in that the evidence did not show that this defendant published the alleged libel with such malice as to justify the amount of the verdict.

74. For that the verdict is contrary to law in that the evidence did not show that the plaintiff suffered such actual damage or that this defendant published the alleged libel with such malice as to justify the amount of the verdict.

75. For that the verdict is contrary to law in that the evidence did not show this defendant published the alleged libel with the intent to defame the plaintiff.

76. For that the verdict is contrary to law in that the evidence did not show this defendant was actuated by actual malice or ill will toward the plaintiff in the publishing of the alleged libel.

77. For that the verdict is contrary to law in that the evidence did not show that the alleged libelous material referred to the plaintiff.

78. For that the verdict is contrary to law in that the evidence did not show that the alleged libelous material referred to this plaintiff with sufficient particularity to cause injury or damage to the plaintiff.

79. For that the verdict is contrary to law in that the evidence did not show that this defendant was guilty of gross negligence and recklessness in the publication of the alleged libel so as to indicate a wanton disregard for plaintiff's right.

80. For that the verdict is contrary to the great preponderance of the evidence.

81. For that the verdict is contrary to the great preponderance of the evidence in that the amount of the damages is grossly excessive.

82. For that the verdict is contrary to the great preponderance of the evidence in that the evidence did not show that the plaintiff suffered any actual damage.

83. For that the verdict is contrary to the great preponderance of the evidence in that the evidence did not show that the plaintiff suffered any substantial damage.

84. For that the verdict is contrary to the great preponderance of the evidence in that the evidence did not show that the plaintiff suffered such actual damage as to justify the amount of the verdict.

85. For that the verdict is contrary to the great preponderance of the evidence in that the evidence did not show that this defendant published the alleged libel with [fol. 2032] such malice as to justify the amount of the verdict.

86. For that the verdict is contrary to the great preponderance of the evidence in that the evidence did not show that the plaintiff suffered such actual damage or that

this defendant published the alleged libel with such malice as to justify the amount of the verdict.

87. For that the verdict is contrary to the great preponderance of the evidence in that the evidence did not show this defendant published the alleged libel with the intent to defame the plaintiff.

88. For that the evidence is insufficient to support the verdict.

89. For that the evidence is insufficient to support the verdict in that the amount of the damages is grossly excessive.

90. For that the evidence is insufficient to support the verdict in that the evidence did not show that the plaintiff suffered any actual damage.

91. For that the evidence is insufficient to support the verdict in that the evidence did not show that the plaintiff suffered any substantial damage.

92. For that the evidence is insufficient to support the verdict in that the evidence did not show that the plaintiff suffered such actual damage as to justify the amount of the verdict.

93. For that the evidence is insufficient to support the verdict in that the evidence did not show that this defendant published the alleged libel with such malice as to justify the amount of the verdict.

94. For that the evidence is insufficient to support the verdict in that the evidence did not show that the plaintiff suffered such actual damage or that this defendant published the alleged libel with such malice as to justify the amount of the verdict.

95. For that the evidence is insufficient to support the verdict in that the evidence did not show this defendant published the alleged libel with the intent to defame the plaintiff.

96. For that the evidence is insufficient to support the verdict in that the evidence did not show this defendant

was actuated by actual malice or ill will toward the plaintiff in the publishing of the alleged libel.

97. For that the evidence is insufficient to support the verdict in that the evidence did not show that the alleged libelous material referred to the plaintiff.

98. For that the evidence is insufficient to support the verdict in that the evidence did not show that the alleged libelous material referred to this plaintiff with sufficient particularity to cause injury or damage to the plaintiff.

[fol. 2033] 99. For that the evidence is insufficient to support the verdict in that the evidence did not show that this defendant was guilty of gross negligence and recklessness in the publication of the alleged libel so as to indicate a wanton disregard for plaintiff's rights.

100. For that the verdict is contrary to the great preponderance of the evidence in that the evidence did not show this defendant was actuated by actual malice of ill will toward the plaintiff in the publishing of the alleged libel.

101. For that the verdict is contrary to the great preponderance of the evidence in that the evidence did not show that the alleged libelous material referred to the plaintiff.

102. For that the verdict is contrary to the great preponderance of the evidence in that the evidence did not show that the alleged libelous material referred to this plaintiff with sufficient particularity to cause injury or damage to the plaintiff.

103. For that the verdict is contrary to the great preponderance of the evidence in that the evidence did not show that this defendant was guilty of gross negligence and recklessness in the publication of the alleged libel so as to indicate a wanton disregard for plaintiff's rights.

104. For that the verdict is contrary to the great weight of the evidence.

105. For that the verdict is contrary to the great weight of the evidence in that the amount of the damages is grossly excessive.

106. For that the verdict is contrary to the great weight of the evidence in that the evidence did not show that the plaintiff suffered any actual damage.

107. For that the verdict is contrary to the great weight of the evidence in that the evidence did not show that the plaintiff suffered any substantial damage.

108. For that the verdict is contrary to the great weight of the evidence in that the evidence did not show that the plaintiff suffered such actual damage as to justify the amount of the verdict.

109. For that the verdict is contrary to the great weight of the evidence in that the evidence did not show that this defendant published the alleged libel with such malice as to justify the amount of the verdict.

110. For that the verdict is contrary to the great weight of the evidence in that the evidence did not show that the plaintiff suffered such actual damage or that this defendant published the alleged libel with such malice as to justify the amount of the verdict.

[fol. 203½] 111. For that the verdict is contrary to the great weight of the evidence in that the evidence did not show this defendant published the alleged libel with the intent to defame the plaintiff.

112. For that the verdict is contrary to the great weight of the evidence in that the evidence did not show this defendant was actuated by actual malice or ill will toward the plaintiff in the publishing of the alleged libel.

113. For that the verdict is contrary to the great weight of the evidence in that the evidence did not show that the alleged libelous material referred to the plaintiff.

114. For that the verdict is contrary to the great weight of the evidence in that the evidence did not show that the alleged libelous material referred to this plaintiff with

sufficient particularity to cause injury or damage to the plaintiff.

115. For that the verdict is contrary to the great weight of the evidence in that the evidence did not show that this defendant was guilty of gross negligence and recklessness in the publication of the alleged libel so as to indicate a wanton disregard for plaintiff's rights.

116. For that the verdict is not sustained by the great preponderance of the evidence.

117. For that the verdict is not sustained by the great preponderance of the evidence in that the amount of the damages is grossly excessive.

118. For that the verdict is not sustained by the great preponderance of the evidence in that the evidence did not show that the plaintiff suffered any actual damage.

119. For that the verdict is not sustained by the great preponderance of the evidence in that the evidence did not show that the plaintiff suffered any substantial damage.

120. For that the verdict is not sustained by the great preponderance of the evidence in that the evidence did not show that the plaintiff suffered such actual damage as to justify the amount of the verdict.

121. For that the verdict is not sustained by the great preponderance of the evidence in that the evidence did not show that this defendant published the alleged libel with such malice as to justify the amount of the verdict.

122. For that the verdict is not sustained by the great preponderance of the evidence in that the evidence did not show that the plaintiff suffered such actual damage or that this defendant published the alleged libel with such malice as to justify the amount of the verdict.

123. For that the verdict is not sustained by the great preponderance of the evidence in that the evidence did not show this defendant published the alleged libel with the intent to defame the plaintiff.

[fol. 2035] 124. For that the verdict is not sustained by the great preponderance of the evidence in that the evidence did not show this defendant was actuated by actual malice or ill will toward the plaintiff in the publishing of the alleged libel.

125. For that the verdict is not sustained by the great preponderance of the evidence in that the evidence did not show that the alleged libelous material referred to the plaintiff.

126. For that the verdict is not sustained by the great preponderance of the evidence in that the evidence did not show that the alleged libelous material referred to this plaintiff with sufficient particularity to cause injury or damage to the plaintiff.

127. For that the verdict is not sustained by the great preponderance of the evidence in that the evidence did not show that this defendant was guilty of gross negligence and recklessness in the publication of the alleged libel so as to indicate a wanton disregard for plaintiff's rights.

128. For that the verdict is contrary to law in that the words in the alleged libel, when given their natural and ordinary meaning, do not degrade the plaintiff and do not tend to injure the plaintiff's reputation by imputing to him some incapacity or lack of due qualification to fill the public office which he holds, or some positive past misconduct which injuriously effects him in his office or the holding of principles which are hostile to the maintenance of government.

129. For that the verdict is contrary to law in that when the words contained in the alleged libel are given their natural and ordinary meaning the same do not degrade the plaintiff and do not injure his reputation by imputing to him gross negligence, dishonesty or other impropriety in the discharge of his official duties.

130. For that the verdict is excessive.

131. For that the verdict is so excessive as to clearly show it was the result of bias, passion, prejudice or other improper motive on the part of the jury.

132. For that the amount of the damages is grossly unjust.

133. For that the amount of the damages is so grossly unjust as to show it was the result of bias, passion, prejudice or other improper motive on the part of the jury.

134. For that the verdict was the result of bias, passion, prejudice or other improper motive on the part of the jury.

135. For that it would be wrong and unjust to allow the verdict to stand in that the plaintiff did not suffer damage as a proximate result of the publication by this defendant of the alleged libel and this law suit was contrived and [fol. 2036] manufactured by the plaintiff in an effort to take advantage of sentiment against this defendant and thereby enrich himself.

136. For that it would be wrong and unjust to allow the verdict to stand in that the plaintiff did not suffer damage as a proximate result of the publication by this defendant of the alleged libel and this law suit was contrived and manufactured by the plaintiff in an effort to take advantage of sentiment against this defendant and thereby enrich himself and to let this verdict stand would deprive this defendant of its property without due process of law in contravention of Section 1 of Amendment 14 of the Constitution of the United States.

137. For that it would be wrong and unjust to allow the verdict to stand in that the plaintiff did not suffer damage as a proximate result of the publication by this defendant of the alleged libel and this law suit was contrived and manufactured by the plaintiff in an effort to take advantage of sentiment against this defendant and thereby enrich himself and to let this verdict stand would deprive this defendant of the equal protection of the laws as guaranteed by Section 1, of Amendment 14 to the Constitution of the United States.

138. For that the verdict of the jury was the result of passion, prejudice and bias against this defendant as a result of conduct of counsel for the plaintiff which was highly prejudicial, improper and censurable and which was

ineradicable from the minds of the jury, and which said conduct consisted of statement by counsel for the plaintiff in final argument to the jury of the following:

"In other words, all of these things that happened did not happen in Russia where the police run everything, they did not happen in the Congo where they still eat them, they happened in Montgomery, Alabama, a law-abiding community."

and which said statement was inflammatory as aforesaid and ineradicable as aforesaid in the minds of the jury inasmuch as the other defendants sued in this cause with this defendant were Negroes, and said improper conduct and statements affected the verdict in this cause and produced a verdict against this defendant or a verdict against this defendant which was grossly excessive.

139. For that the court erred in submitting this cause to the jury in such fashion as to permit the jury only to return a general verdict in this cause where there were five separate defendants, and where, under the evidence and pleadings in said cause either one or more of said defendants might have been liable for either compensatory damages or punitive damages or both, and one or more of the other said defendants may not have been so liable, but the manner in which the case was submitted to the jury did [fol. 2037] not permit the jury under proper instructions of the court to so find, or to acquit either of said defendants in the event that such defendant was found by the jury to have been not liable for punitive damages.

140. For that the court erred in refusing to give the following written instructions to the jury at the request of the defendant, The New York Times Company, a corporation:

"T.59. I charge you, gentlemen of the jury, that if you return a verdict for the plaintiff and assess damages against one or more of the defendants, you must specify in your verdict what part of the damages are compensatory and what part of the damages are punitive as to each defendant against whom a verdict is returned." Refused, Jones Judge.

the effect of which refusal was to deprive this defendant of its property without due process of law in contravention of Section 6, Article 1 of the Constitution of Alabama of 1901, and of Section 1 of Amendment 14 to the United States Constitution, in that the refusal of such written instruction permitted the jury in this cause to assess punitive damages against all defendants in this cause without finding that each defendant in this cause was liable for punitive damages.

141. For that the court erred in failing to give the following written instructions to the jury at the request of the defendant, The New York Times Company, a corporation:

"T.60. I charge you, gentlemen of the jury, that if you believe from all of the evidence in this case that the plaintiff is entitled to recover damages against one or more of the defendants in this case you may in your discretion, put your verdict as to such damages, if any, in the form of special findings; that is to say you may assess any punitive or compensatory damages separately, indicating in what amount each kind of damages is found and as to which defendant, if any, it is so found." Refused, Jones Judge.

the effect of which refusal was to deprive this defendant of its property without due process of law in contravention of Section 6, Article 1 of the Constitution of Alabama of 1901, and of Section 1 of Amendment 14 to the United States Constitution, in that the jury was permitted only to render a verdict imposing the same amount of damages on all defendants or none on all defendants and was not afforded the opportunity to render a verdict imposing punitive damages as to one or more defendants and no punitive damages as to one or more of the other defendants.

142. The court erred in failing to give the following written instructions to the jury at the request of the defendant, The New York Times Company, a corporation:

[fol. 2038] "T.63. I charge you, gentlemen of the jury, that if you find from all the evidence that the plaintiff is entitled to punitive damages from one or more of the defendants but not from one or more of the other defendants, you must return a verdict in favor of all the defendants." Refused, Jones, Judge.

the effect of which refusal was to deprive this defendant of its property without due process of law in contravention of Section 6, Article 1 of the Constitution of Alabama of 1901, and of Section 1 of Amendment 14 to the United States Constitution, in that the jury was permitted only to render a verdict imposing the same amount of damages on all defendants or none on all defendants and was not afforded the opportunity to render a verdict imposing punitive damages as to one or more defendants and no punitive damages as to one or more of the other defendants.

143. For that the verdict of the jury, being general in form against all defendants in this cause, deprived this defendant of its property without due process of law in contravention of Section 6, Article 1 of the Constitution of Alabama of 1901, and of Section 1 of Amendment 14 to the United States Constitution.

144. For that the verdict of the jury, being general in form against all defendants in this cause, deprived this defendant of its property without due process of law in contravention of Section 6, Article 1 of the Constitution of Alabama of 1901 and of Section 1 of Amendment 14 to the United States Constitution, in that it permitted the assessment of punitive damages against all defendants in this cause upon a finding by the jury that only one or more, but less than all of said defendants were liable for punitive damages.

145. For that the verdict of the jury, being general in form against all defendants in this cause, deprived this defendant of its property without due process of law in contravention of Section 6, Article 1 of the Constitution of Alabama of 1901 and of Section 1 of Amendment 14 to the United States Constitution, in that the jury was not permitted, upon finding that only one or more but not all of said defendants were liable for the payment of punitive damages, to acquit or discharge such defendants as the jury might find were not liable for the payment of punitive damages or guilty of actual malice.

146. For that the verdict of the jury was a result of passion or prejudice against this defendant, The New York

Times Company, a corporation, as a result of an improper remark of the court made in the presence and hearing of the jury which was highly prejudicial, improper, censurable and ineradicable from the minds of the jury and consisted of the following statement made during the proceedings on the cross examination of the witness, Gershon Aronson,"

[fol. 2039] "Cross examination by Mr. M. R. Nachman, Jr.:

* * * * * * *

Q. Would you state now, sir, what that word means to you: Whether it has only a time meaning or whether it also to your eye and mind has a cause and effect meaning?

Mr. Embry: Now, we object to that, Your Honor, That's a question for the jury to determine—

The Court: Well, of course, it probably (ultimately) will be a question for the jury, but this gentleman here is a very high official of The Times, and I should think he can testify—

Mr. Daly: I object to that, Your Honor, He isn't a high official of The Times at all—

Mr. Embry: He is just a man that has a routine job there, Your Honor, He is not—

The Court: Let me give you an exception to the court's ruling.

Mr. Embry: We except.

to which remark of the court this defendant duly and legally objected, but which remark was ineradicable from the minds of the jury and created such prejudice against this defendant in this cause as to result in the verdict of the said jury against this defendant.

147. For that the verdict of the jury is contrary to the law in this case in that there was no allegation or proof that the matter complained of as being libelous was spoken of and concerning the plaintiff.

148. For that the verdict of the jury is contrary to the evidence in this case in that there was no evidence properly before the jury in this case authorizing the jury to find that

the matter complained of as being libelous referred to or was spoken of and concerning the plaintiff in this case.

149. For that the verdict of the jury is the result of bias, passion, and prejudice against the defendant, The New York Times Company, a corporation.

150. For that the verdict is so excessive as to demonstrate that the same was the result of bias, passion and prejudice against The New York Times Company, a corporation.

151. For that the verdict of the jury is so excessive as to shock the conscience of the court.

152. For that the verdict in this cause deprives this defendant of its property without due process of law by imposing on it the obligation to pay damages that were assessed and designed to punish one or more other defendants for whose actions this defendant was not legally responsible.

153. For that the verdict in this cause deprives this defendant of its property without due process of law in contravention of Section 6, Article 1 of the Constitution [fol. 2040] of Alabama of 1901 by imposing on it the obligation to pay damages that were assessed and designed to punish one or more other defendant for whose actions this defendant was not legally responsible.

154. For that the verdict in this cause deprives this defendant of its property without due process of law in contravention of Section 1 of Amendment 14 to the United States Constitution by imposing on it the obligation to pay damages that were assessed and designed to punish one or more other defendant for whose actions this defendant was not legally responsible.

155. The court erred in submitting this cause to the jury for its consideration on the question of whether the matter complained of as being libelous referred to or was of and concerning the plaintiff and by so doing and thereby permitting the jury to return a verdict against this defendant denied to this defendant equal protection of the laws as guaranteed to it by Section 1 of the 14th Amendment to

the Constitution of the United States and Sections 6 and 13 of Article 1 of the Constitution of Alabama of 1901.

156. The court erred in submitting this cause to the jury for its consideration on the question of whether the matter complained of as being libelous referred to, or was of and concerning the plaintiff, and by so doing and thereby permitting the jury to return a verdict against this defendant denied to this defendant equal protection of the laws as guaranteed to it by Section 1 of the 14th Amendment to the Constitution of the United States.

157. The court erred in submitting this cause to the jury for its consideration on the question of whether the matter complained of as being libelous, referred to, or was of and concerning the plaintiff, and by so doing and thereby permitting the jury to return a verdict against this defendant denied to this defendant equal protection of the laws as guaranteed to it by Sections 6 and 13 of Article 1 of the Constitution of Alabama of 1901.

158. For that the court erred in submitting this cause to the jury for its consideration and in so doing denied to this defendant equal protection of the laws as guaranteed to it by the Constitution of the United States and Section 1 of Amendment 14 thereto.

159. For that the cumulative effect of the errors in the trial of this cause was such as to deprive this defendant of a fair trial so as to thereby deprive it of its property without due process of law in contravention of Section 1 of the 14th Amendment to the Constitution of the United States.

160. For that the cumulative effect of the errors in the trial of this cause was such as to deprive this defendant of a fair trial so as to thereby deprive it of its property without due process of law in contravention of Section 6 and 13 of Article 1 of the Constitution of Alabama of 1901.

[fol. 2041] 161. For that the cumulative effect of the errors in the trial of this cause was such as to deny this defendant equal protection of the laws as guaranteed to it under the provisions of Section 1 of the 14th Amendment to the Constitution of the United States.

162. For that the cumulative effect of the errors in the trial of this cause was such as to deny this defendant equal protection of the laws as guaranteed to it under the provisions of Article 1, Section 35 of the Constitution of Alabama of 1901.

163. For that the venire from which the jury was selected for the trial of this cause was selected and empaneled under the provisions of Act 118 of March 8, 1939, a local act of the Regular Session of the Legislature of Alabama, 1939, establishing the jury commission in Montgomery County, Alabama, and said jury venire was improperly selected and empaneled in that said Act is violative of the Constitution and laws of the State of Alabama.

164. For that the venire from which the jury was selected for the trial of this cause was selected and empaneled under the provisions of Act 118 of March 8, 1939, a local act of the Regular Session of the Legislature of Alabama, 1939, establishing the jury commission in Montgomery County, Alabama, and said jury venire was improperly selected and empaneled in that said Act is violative of Article 4, Section 105 of the Constitution of Alabama, 1901.

165. For that the venire from which the jury was selected for the trial of this cause was selected and empaneled under the provisions of Act 118 of March 8, 1939, a local act of the Regular Session of the Legislature of Alabama 1939, establishing the jury commission in Montgomery County, Alabama, and said jury venire was improperly selected and empaneled in that said Act is in contravention of Section 1 of the 14th Amendment to the Constitution of the United States and deprives this defendant of its property without due process of law.

166. For that the court erred in refusing to give the following written instructions to the jury, at the request of the defendant, The New York Times Company, a corporation:

"T.59. I charge you, gentlemen of the jury, that if you return a verdict for the plaintiff and assess damages against one or more of the defendants, you must specify in your

verdict what part of the damages are compensatory and what part of the damages are punitive as to each defendant against whom a verdict is returned." Refused, Jones, Judge.

the effect of which refusal was to deprive this defendant of its property without due process of law in contravention of Section 6, Article 1 of the Constitution of Alabama of 1901, and of Section 1 of Amendment 14 to the United States Constitution in that the refusal of such written instruction permitted the jury in this cause to return a verdict which would require this defendant to pay damages and [fol. 2042] suffer punishment disproportionate to the degree of misconduct, if any, on the part of this defendant.

167. The court erred in failing to give the following written instructions to the jury at the request of the defendant, The New York Times Company, a corporation:

"T.60. I charge you, gentlemen of the jury, that if you believe from all the evidence in this case that the plaintiff is entitled to recover damages against one or more of the defendants in this case you may in your discretion, put your verdict as to such damages, if any, in the form of special findings; that is to say you may assess any punitive or compensatory damages separately, indicating in what amount each kind of damage is found and as to which defendant, if any, it is so found." Refused, Jones, Judge.

the effect of which refusal was to deprive this defendant of its property without due process of law in contravention of Section 6, Article 1 of the Constitution of Alabama of 1901; and of Section 1 of Amendment 14 to the United States Constitution in that the jury was permitted to return a verdict which would require this defendant to pay damages and suffer punishment disproportionate to the degree of misconduct, if any, on the part of this defendant.

168. The court erred in failing to give the following written instructions to the jury at the request of this defendant, The New York Times Company, a corporation:

"T.63. I charge you, gentlemen of the jury, that if you find from all the evidence that the plaintiff is entitled to punitive damages from one or more of the defendants but not from one or more of the other defendants, you must

return a verdict in favor of all the defendants." Refused, Jones, Judge.

the effect of which refusal was to deprive this defendant of its property without due process of law in contravention of Section 6, Article 1 of the Constitution of Alabama of 1901, and of Section 1 of Amendment 14 to the United States Constitution in that the jury was permitted to return a verdict which would require this defendant to pay damages and suffer punishment disproportionate to the degree of misconduct if any, on the part of this defendant.

169. For that the verdict of the jury, being general in form against all defendants in this cause, deprived this defendant of its property without due process of law in contravention of Section 6, Article 1, of the Constitution of Alabama of 1901 and of Section 1 of Amendment 14 to the United States Constitution in that it required this defendant to pay damages and suffer punishment disproportionate to the degree of misconduct, if any, on the part of this defendant.

[fol. 2043] 170. For that the verdict in this cause deprives this defendant of its property without due process of law in contravention of Section 6, Article 1 of the Constitution of Alabama of 1901 by imposing on it the obligation to pay damages and suffer punishment disproportionate to the degree of misconduct, if any, on the part of this defendant.

171. For that the court erred in refusing to give the following written instructions to the jury at the request of the defendant, The New York Times Company, a corporation:

"T.59. I charge you, gentlemen of the jury, that if you return a verdict for the plaintiff and assess damages against one or more of the defendants, you must specify in your verdict what part of the damages are compensatory and what part of the damages are punitive as to each defendant against whom a verdict is returned." Refused, Jones, Judge.

the effect of which refusal was to deprive this defendant of its property without due process of law in contravention

of Section 1, Amendment 14 to the Constitution of the United States.

172. For that the court erred in refusing to give the following written instructions to the jury at the request of the defendant, The New York Times Company, a corporation:

"T.60. I charge you, gentlemen of the jury, that if you believe from all the evidence in this case that the plaintiff is entitled to recover damages against one or more of the defendants in this case you may in your discretion, put your verdict as to such damages, if any, in the form of special findings; that is to say you may assess any punitive or compensatory damages separately, indicating in what amount each kind of damage is found and as to which defendant, if any, it is so found." Refused, Jones, Judge.

the effect of which refusal was to deprive this defendant of its property without due process of law in contravention of Section 1, Amendment 14 to the Constitution of the United States.

173. For that the court erred in refusing to give the following written instructions to the jury at the request of the defendant, The New York Times Company, a corporation:

"T.63. I charge you, gentlemen of the jury, that if you find from all the evidence that the plaintiff is entitled to punitive damages from one or more of the defendants but not from one or more of the other defendants you must return a verdict in favor of all the defendants." Refused, Jones, Judge.

the effect of which refusal was to deprive this defendant of its property without due process of law in contravention of Section 1, Amendment 14 to the Constitution of the United States.

[fol. 2044] 174. For that the verdict of the jury was the result of passion, prejudice and bias against this defendant as a result of conduct of counsel for the plaintiff which was highly prejudicial, improper and censurable and which

was ineradicable from the minds of the jury, and which said conduct consisted of statement by counsel for the plaintiff in final argument to the jury of the following:

"In other words, all of these things that happened did not happen in Russia where the police run everything, they did not happen in the Congo where they still eat them, they happened in Montgomery County, Alabama, a law abiding community."

and which said statement was inflammatory as aforesaid and ineradicable as aforesaid in the minds of the jury inasmuch as the other defendants sued in this cause with this defendant were Negroes, and said improper conduct and statements affected the verdict in this cause and produced a verdict against this defendant or a verdict against this defendant which was grossly excessive and deprived this defendant of its property without due process of law in contravention of Section 1 of Amendment 14 to the Constitution of the United States.

175. For that the verdict of the jury was the result of passion, prejudice and bias against this defendant as a result of conduct of counsel for the plaintiff which was highly prejudicial, improper and censurable and which was ineradicable from the minds of the jury, and which said conduct consisted of statement by counsel for the plaintiff in final argument to the jury of the following:

"In other words, all of these things that happened did not happen in Russia where the police run everything, they did not happen in the Congo where they still eat them, they happened in Montgomery County, Alabama, a law abiding community."

and which said statement was inflammatory as aforesaid and ineradicable as aforesaid in the minds of the jury inasmuch as the other defendants sued in this cause with this defendant were Negroes, and said improper conduct and statements affected the verdict in this cause and produced a verdict against this defendant, or a verdict against this defendant which was grossly excessive and denied this defendant equal protection of the laws as guaranteed by

Section 1 of Amendment 14 to the Constitution of the United States.

176. For that the verdict of the jury was the result of passion, prejudice and bias against this defendant as a result of conduct of counsel for the plaintiff which was highly prejudicial, improper and censurable and which was ineradicable from the minds of the jury, and which said conduct consisted of statement by counsel for the plaintiff in final argument to the jury of the following:

[fol. 2045] "In other words, all of these things that happened did not happen in Russia where the police run everything, they did not happen in the Congo where they still eat them, they happened in Montgomery County, Alabama, a law abiding community."

and which said statement was inflammatory as aforesaid and ineradicable as aforesaid in the minds of the jury inasmuch as the other defendants sued in this cause with this defendant were Negroes, and said improper conduct and statements affected the verdict in this cause and produced a verdict against this defendant or a verdict against this defendant which was grossly excessive, and denied this defendant a trial by a fair and impartial jury as guaranteed by the provisions of the Constitutions of the United States and of the State of Alabama.

177. For that the verdict of the jury, being general in form against all defendants in this cause, deprived this defendant of its property without due process of law in contravention of Section 6, Article 1 of the Constitution of Alabama of 1901, and of Section 1 of Amendment 14 to the United States Constitution in that the verdict and judgment rendered thereon prevent an ascertainment of the amount and nature of the damages which the jury found this defendant should pay as a proximate consequence of its conduct in this case as distinguished from the amount and nature of damages any other of the defendants should pay as a result of their conduct in this case.

178. For that the verdict of the jury, being general in form against all defendants in this cause, deprived this defendant of its property without due process of law in

contravention of Section 1 of Amendment 14 to the United States Constitution in that the verdict and judgment rendered thereon prevent an ascertainment of the amount and nature of the damages which the jury found this defendant should pay as a proximate consequence of its conduct in this case as distinguished from the amount and nature of damages any other of the defendants should pay as a result of their conduct in this case.

179. For that the court erred in submitting this cause to the jury in such fashion as to permit the jury only to return a general verdict where there were five separate defendants and where, under the evidence and pleadings in the said cause, either one or more of said defendants might have been liable for either compensatory damages or punitive damages, or both and each defendant's liability for punitive damages might have been in different amounts, and said general verdict would prevent an ascertainment of the amount and nature of the damages which the jury found this defendant should pay as a proximate consequence of its conduct in this case and thereby deprived this defendant of its property without due process of law in contra- [fol. 2046] vention of the provisions of Section 1 of Amendment 14 to the Constitution of the United States.

180. For that the court erred in submitting this cause to the jury in such fashion as to permit the jury only to return a general verdict where there were five separate defendants and where, under the evidence and pleadings in said cause, either one or more of said defendants might have been liable for either compensatory damages or punitive damages, or both, and each defendant's liability for punitive damages might have been in different amounts, and said general verdict would prevent an ascertainment of the amount and nature of the damages which the jury found this defendant should pay as a proximate consequence of its conduct in this case and thereby deprived this defendant of its property without due process of law in contravention of the provisions of Section 6, Article 1 of the Constitution of Alabama of 1901.

181. The court erred in charging the jury in contravention of the established law of libel as established by the deci-

sions of the highest appellate court of Alabama that the matter complained of and contained in the advertisement which was plaintiff's Exhibit #347 was libelous per se and thereby denied to this defendant the equal protection of the laws as guaranteed to it by the Constitution of the United States in Section 1 of Amendment 14 thereto.

182. The court erred in allowing photographs of the jury to be taken in the courtroom during the trial of this cause which were used and printed in a newspaper during the trial of this cause in Montgomery, Alabama, which photographs are attached hereto as Exhibits II and III and in permitting motion pictures to be taken in the court room of the jury in this cause during the trial thereof which motion pictures were for the purpose of and were displayed on television in Montgomery County, Alabama, during the trial of this cause, and thereby denied to this defendant a trial by a fair and impartial jury as guaranteed by the Constitution of the United States and Section 1 of Amendment 14 thereto and by the Constitution of the State of Alabama.

183. For that this defendant was denied a fair trial by an impartial jury as guaranteed to it by the provisions of Section 1 of Amendment 14 to the Constitution of the United States and Article 1, Section II of the Constitution of Alabama of 1901 in that the jury which tried this cause and rendered the verdict herein was overreached and subjected to pressure of community sentiment against this defendant evidenced, among other things, by the following: prior to the trial of this cause and on or about the 7th day of April, 1960, there appeared in the Montgomery Advertiser, a newspaper of general circulation in Montgomery County, Alabama, and in the City of Montgomery, the [fol. 2047] editorial concerning the advertisement which was the basis of plaintiff's complaint in this cause and which is attached hereto as Exhibit I and on voir dire examination a large number of the venire from which the jury that tried this case was selected, stated that they had read about the case and said advertisement in the local press. This defendant says that such editorial expresses the widespread sentiment of the community of the City

of Montgomery and Montgomery County, Alabama, which was prevalent prior to and during the trial of this cause. Such community sentiment was conveyed to the jury which tried this cause by said editorial and other publicity throughout the community and the pressure of such sentiment to award a verdict against this defendant in this cause was exerted upon the said jury trying said cause by the publication on the front page of the Alabama Journal a newspaper of general circulation in the City and County of Montgomery, Alabama, of a photograph of the venire and of the names of the jurors selected for the trial of this cause on November 1, 1960, which said photograph and publication of said names are as found and contained in Exhibit II hereto attached.

After the selection of said jury for the trial of this cause such pressure of such sentiment was further exerted upon them by the publication of news stories relating to this case and photographs of the jury during the trial of this cause in both the Alabama Journal and The Montgomery Advertiser as appear from Exhibits III, IV, and V attached hereto as well as by the presence within the bar railing near counsel tables in plain view of and in close proximity to the jury, of numerous news reporters and photographers.

Such pressure of such public sentiment was further exerted upon said jury by the taking, during the trial of this cause within the courtroom, of motion pictures of the jury and the conduct of said trial as well as the taking of such motion pictures of said jury as they entered the jury room for their deliberations in this cause; all of which above had the effect so overreaching said jury as to influence them to render a verdict against this defendant to make it impossible for them to render a fair and impartial verdict in this cause.

184. For that the defendant was deprived of a fair and impartial trial under the 14th Amendment to the United States Constitution in that counsel for the plaintiff was allowed to present the case to the jury as a sectional conflict rather than as a cause of action for libel, and in particular the closing remarks of counsel for the plaintiff were designed and did inflame the jury so as to prevent the jury

from impartially deciding the cause on its merits and so as instead to cause the jury ineradicably to conceive the issue presented to them to be whether or not to punish a Northern newspaper for what it had published regarding [fol. 2048] the local community at large. These remarks were:

Mr. Steiner: Now, this is a libel suit. In our complaint we alleged that on March 29th, 1960 the New York Times, that great newspaper, who in their masthead say, we print all the news that's fit to print, published a pack of lies about this man right here. For that, we ask that you return a verdict of $500,000. That, gentlemen, is what we are asking for and that is what we will continue to ask for no matter what any of these lawyers say. Now, what does the ad say? "In Montgomery, Alabama, after students sang 'My Country, 'Tis of Thee' on the State Capitol Steps"—that's the first thing. Gentlemen, they couldn't even get the song right! Mr. Sitton, who comes to Montgomery—it's in his territory—he was right on hand. There is, of course, some distance between New York and Montgomery, or New York and Birmingham. All they had to do was pick up the phone and say, Mr. Sitton, did those folks sing "My Country, 'Tis of Thee"? Not that that's material, but, gentlemen, they didn't even get the song right! Sitton said they sang the National Anthem. Now, then, what happened? In Montgomery, after they sang—their leaders were expelled from school. In other words, all of these things that happened didn't happen in Russia where the police run everything; they didn't happen in the Congo where they still eat 'em; they happened in Montgomery Alabama, a law-abiding community, etc."

185. For that the verdict of the jury was an abridgment of freedom of the press in violation of the 1st Amendment to the Constitution of the United States and the 14th Amendment thereto in that it penalized defendant for publishing statements which, under the aforesaid amendment, could not constitutionally be held to be defamatory of this plaintiff.

186. For that the verdict of the jury was not merely punitive but prohibitive and confiscatory and amounts to

an improper restraint on freedom of the press in violation of the 1st and 14th Amendment to the Constitution of the United States.

187. For that the verdict of the jury constitutes an unreasonable burden on interstate commerce in violation of Article 1, Section 8, and the 14th Amendment to the Constitution of the United States.

188. For that the court's oral charge to the jury erroneously instructed the jury that the publication complained of was of and concerning the plaintiff, and thereby withdrew that issue from the consideration of the jury, by the following portion of said charge, to which this defendant duly and legally excepted:

The Court: "So, as I said, if you are reasonably satisfied from the evidence before you, considered in connection with the rules of law the court has stated to you, you would come to consider the question of damages and, where as [fol. 2049] here, the court has ruled the matter complained of proved to your reasonable satisfaction and aimed at the plaintiff in this case, is libelous per se then punitive damages may be awarded by the jury even though the amount of actual damages is neither found nor shown."

Mr. Embry: We except, Your Honor. We except to the oral portions of Your Honor's charge wherein Your Honor charged on libel per se."

189. For that the cumulative effect of the errors in the trial of this cause was such as to constitute an abridgment of freedom of the press in contravention of the 1st and 14th Amendments to the Constitution of the United States.

190. For that the cumulative effect of errors in the trial of this cause was such as to impose an undue burden upon interstate commerce in contravention of Article 1, Section 8 of the Constitution of the United States.

191. The court erred in submitting this cause to the jury for its consideration on the question of whether the matter complained of as being libelous referred to or was of and concerning the plaintiff and by so doing and thereby per-

mitting the jury to return a verdict against this defendant abridged freedom of the press in contravention of the 1st and 14th Amendments to the Constitution of the United States.

192. The court erred in submitting this cause to the jury for its consideration on the question of whether the matter complained of as being libelous referred to or was of and concerning the plaintiff and by so doing and thereby permitting the jury to return a verdict against this defendant imposed an undue burden upon interstate commerce in contravention of Article 1, Section 8 of the Constitution of the United States.

193. The court erred in its oral instructions to the jury in this case to the effect that the matter complained of by plaintiff, contained in plaintiff's Exhibit No. 347, was libelous per se, to which this defendant duly and legally excepted and which said charge was in contravention of the established law of libel as pronounced by the decisions of the highest appellate court of Alabama, and thereby imposed an undue burden upon interstate commerce in contravention of Article 1, Section 8 of the Constitution of the United States.

194. The court erred in its oral instructions to the jury in this case to the effect that the matter complained of by plaintiff, contained in plaintiff's Exhibit No. 347, was libelous per se to which this defendant duly and legally excepted and which said charge was in contravention of the established law of libel as pronounced by the decisions of the highest appellate court of Alabama and thereby imposed an undue burden upon interstate commerce in contravention of the 1st and 14th Amendments to the Con-
[fol. 2050] stitution of the United States.

195. For that the error of the court in refusing to give the written instructions to the jury as complained of in ground No. 140 of this motion placed an undue burden upon interstate commerce in contravention of Article 1, Section 8 of the United States Constitution by permitting the jury in this cause to assess punitive damages against all defen-

dants in this cause without finding that each defendant was liable for punitive damages.

196. For that the error of the court in refusing to give the written instructions to the jury as complained of in ground No. 140 of this motion constituted an abridgement of freedom of the press in contravention of the 1st and 14th Amendments to the Constitution of the United States by permitting the jury in this cause to assess punitive damages against all defendants in this cause without finding that each defendant in this cause was liable for punitive damages.

197. For that the error of the court in failing to give the written instructions complained of in ground No. 141 of this motion imposed an undue burden upon interstate commerce in violation of Article 1, Section 8 of the Constitution of the United States.

198. For that the error of the court, in failing to give the written instructions complained of in ground No. 141 of this motion constitutes an abridgement of freedom of the press in violation of the 1st and 14th Amendments to the Constitution of the United States.

199. For that the error of the court in failing to give the written instructions to the jury as complained of in ground No. 142 of this motion imposes an undue burden upon interstate commerce in violation of Article 1, Section 8, of the Constitution of the United States.

200. For that the error of the court in refusing to give the written instructions as complained of in ground No. 142 of this motion constitutes an abridgement of freedom of the press in violation of the 1st and 14th Amendments of the Constitution of the United States.

201. For that the verdict of the jury, being general in form against all defendants in this cause, constitutes an undue burden upon interstate commerce in violation of Article 1, Section 8 of the United States Constitution.

202. For that the verdict of the jury, being general in form against all defendants in this cause, constitutes an

abridgement of freedom of the press in violation of the 1st and 14th Amendments to the United States Constitution.

Beddow, Embry and Beddow, By: Roderick M. MacLeod, Jr., Attorneys of record for The New York Times Company, a corporation.

[fol. 2051]

EXHIBIT I TO MOTION OF DEFENDANTS THE NEW YORK TIMES FOR NEW TRIAL

MONTGOMERY ADVERTISER

Montgomery, Ala., April 7, 1960

WILL THEY PURGE THEMSELVES?

There are voluntary liars, there are involuntary liars. Both kinds of liars contributed to the crude slanders against Montgomery broadcast in a full-page advertisement in *The New York Times* March 29.

And its up to *The New York Times* and the involuntary liars to purge themselves of their false witness.

The Times boasts that it screens advertisements to eliminate what is indelicate or in bad taste. Perhaps demonstrable lies will at some future time be screened and found unfit for print.

This advertisement was sponsored by the "Committee To Defend Martin Luther King And The Struggle For Freedom In The South." And of course it was an appeal for cash contributions of the kind now in question on the Reverend Doctor's state income tax return.

Among others, the ad contains this statement:

"In Montgomery, Alabama, after students sang *My Country 'Tis of Thee* On the State Capitol steps, their leaders were expelled from school, and truck loads of police armed with shotguns and tear-gas ringed the Alabama State College Campus. When the entire student body

protested to state authorities by refusing to re-register, their dining hall was padlocked in an attempt to starve them into submission."

Lies, lies, lies—and possibly willful ones on the part of the fund-raising novelist who wrote those lines to prey on the credulity, self-righteousness and misinformation of northern citizens.

The Republic paid a dear price once for the hysteria and mendacity of abolitionist agitators. The author of this ad is a lineal descendant of those abolitionists and the breed runs true.

On the committee whose names are affixed as sponsors of the propaganda are some distinguished persons, such as Dr. Harry Emerson Fosdick, Elmer Rice and Norman Thomas. Such ones were victimized and we should think they will deem it a duty to their own honor to test *The Advertiser's* perjury charges and cleanse their names.

Others on the committee are just corner pick-ups from the Broadway marquee such as Harry Belafonte, Marlon Brando, Eartha Kitt, Shelley Winters and Mrs. Roosevelt. They, of course, just came along for the ride and it probably is not possible to excite their interest in a thing so homely as truth.

But *The Advertiser* is going to have to revise some estimates if committeemen such as Dr. Fosdick, Rice and Thomas and *The New York Times* do not feel called upon to ascertain whether *The Advertiser* is correct in asserting their names are married to a slanderous lie.

As for the Reverend Doctor King, let the people of Montgomery—colored and white—judge him. People here know what happened. King knows what happened. It may be that he never saw the ad before publication. If so, let white and colored alike see what King does to unwork this slander in his name.

[fol. 2052]

EXHIBIT II TO MOTION OF DEFENDANTS THE NEW YORK TIMES FOR NEW TRIAL

WEATHER

ry and mild this afternoon; ld cold again tonight with ered light frost. Sunday and n Wednesday. Low tonight igh tomorrow 72.

(More Weather, Page 5-A)

ALABA

Ala. Journal 11/17/60

Central And

YEAR—NO. 252 Ph. *AM 2-1611 THE ASSOCIATED PRESS MO

OFF TO SLOW START

JURORS SELECTED FOR TIMES SUIT

By Judith Rushin
Journal Staff Writer

Police Commissioner L. B. Sullivan's $500,000 libel suit against The New York Times got off to a slow start this morning, the majority of the time being taken for selection of a jury.

Times attorneys questioned all jurors at length concerning their feelings toward any position the New York newspaper might have taken and any connection the jurors might have with Sullivan's lawyers or the City of Montgomery.

Two Negroes were among the original 37 jurors called for service this week, however they were immediately struck from the list by attorneys for Sullivan.

JURORS SEATED

Jurors who will hear the controversial case, which is expected to last all week are John B. Sanford, Boland R. Albright, John C. Boswell, Patrick T. Cahalin, Richard C. Croy, Guy Davidson, Carl Henry, Billy R. Miller, J. Auburn Moorer, Joseph W. McDade, Henry W. Rawls, and John R. Rigsby.

Sullivan's suit is one of three libel actions brought against The Times and four Alabama Negroes based on an advertisement which ran in the Times March 29.

The ad placed in the newspaper by the Committee to Defend Martin Luther King and the Struggle for Freedom in the South, allegedly libeled Sullivan and city commissioners Earl James and Frank Parks in referring to police action taken in regard to Negro student demonstrations here.

2 OTHER CASES ON FILE

James and Parks have also each sued for $500,000.

Named as defendants, along with The New York Times, are Negro ministers Ralph D. Abernathy, Solomon S. Seay

Sr., Fred H. Shuttlesworth and J. E. Lowery, all of whom endorsed the advertisement.

According to one of Sullivan's attorneys, Roland Nachman, The Times retracted the incorrect portions of the ad referring to Montgomery to Gov. John Patterson, but never to Sullivan himself.

No retraction was ever made by the Negro defendants in the case, Nachman said.

Attorneys for The Times denied that the ad in question libeled Sullivan and said no where in the advertisement was there any reference to Sullivan or the police department.

JUDGE JONES PRESIDES

The Times had no reason to believe that material in the ad was false because it received the ad from a reputable advertising agency, said Atty. T. Eric Embry of Birmingham who represents the newspaper in the suit.

Sullivan's suit charges The Times with falsely and maliciously publishing the alleged libelous matter and asks for both general damages for injury to himself and punitive damages against the newspaper.

Opening statements as to what they expected to prove were

(See TIMES SUIT, Page 2-A)

given the jury by attorneys on both sides of the controversy before the court recessed for lunch. Testimony will begin this afternoon.

Circuit Judge Walter B. Jones is presiding over the case.

Attorney Fred Gray, representing the Negro defendants, told the jury that his clients did not sign the ad, were not members of the committee which published the ad, were never approached by that committee as to the use of their names, and in fact did not know that the ad was to be run.

"What happened to them could happen to you or anyone else," Gray said.

[fol. 2053]

EXHIBIT III TO MOTION OF DEFENDANTS THE NEW YORK TIMES FOR NEW TRIAL

(See opposite) ☞

WEATHER
ir and warmer this afternoon
tonight. Partly cloudy and
Thursday. Low tonight 50,
tomorrow 68.
(More Weather, Page 3-A.)

ALABAMA

Central And Southeast Alabc

d YEAR—NO. 263 Ph. *AM 2-1611 THE ASSOCIATED PRESS MONTGOMERY, ALABAMA, W

L. B. Sullivan Testifies In Times Suit

By JUDITH RUSHIN
Journal Staff Writer

Police Commissioner L. B. Sullivan told a Circuit urt jury this morning that in his opinion statements a New York Times advertisement referred to him d reflected upon his "ability and integrity."

Attorneys for Sullivan in his $500,000 libel action against the New York newspaper rested their case after hearing from one more witness.

DEFENSE TO OPEN

Defense attorneys for The Times and for four Alabama Negroes also being sued are expected to present their evidence this afternoon.

JURORS IN NEW YORK TIMES L

A JOURNAL

Alabama's Largest Evening Newspaper

AMA, WEDNESDAY, NOVEMBER 2, 1960 UNITED PRESS

MES LIBEL TRIAL LISTEN ATTENTIVELY

On cross examination, Times attorney T. Eric Embry of Birmingham attempted to prove that Sullivan had not in fact been damaged by the wording in the ad published March 29, in The Times, soliciting funds for the defense of King.

"Have you ever been ridiculed? Do you feel ill at ease walking about the streets of Montgomery?" Embry asked.

"I haven't had anyone come up to me personally and say they held me in ridicule because of the ad," Sullivan said.

"Has anyone threatened to have you removed from office?" Embry asked, to which the commissioner replied, "No."

"Have you been shunned by anyone in a public place

(See TIMES SUIT, Page 2-A)

or at the house of a friend or in any restaurant where you have been since the publication of the ad?"

"I don't recall," Sullivan answered.

Negro attorney V. Z. Crawford, of Mobile, who represents the four Negro defendants, then asked Sullivan if he filed suit to get publicity to run for another office.

Circuit Judge Walter B. Jones threw the question out as improper as Sullivan's attorneys jumped up to object.

After the plaintiff rested his case this morning, Negro atty. Fred Gray, of Montgomery, who is also representing the Negro defendants, filed a motion with the court to have his clients excluded on the grounds that Sullivan's attorneys failed to connect them with the case.

Judge Jones over-ruled the motion, recessed the trial for lunch, and said court would re-convene at 2:30 today.

DEFENDANTS

The Negro defendants, Ralph D. Abernathy, S. S. Seay Sr., Fred Shuttlesworth and J. E. Lowery, were made parties to the suit because their names appear at the bottom of the full-page ad, allegedly as endorsers.

A Dothan trucking official was the first witness to take the stand this morning as the case went into its second day. Horace D. White, an officer in the P. C. White Truck Lines,

said Sullivan had formerly worked for his company as safety director.

White testified that had he believed the information in the ad about police handling of student demonstrations here he would be reluctant to re-hire Sullivan.

OTHER INCIDENTS

Testimony also went into the record concerning other incidents mentioned in the ad. Circuit Clerk John Matthews read the names of student demonstrators who pleaded guilty to disorderly conduct and refusing to obey an officer and the fines they received, over Gray's objection that the cost of appeal was the reason for their pleading guilty.

Police detective Lt. E. Y. Lacy told the jury of the bombings at King's house, saying one of the bombs failed to go off. The other caused no injury.

Lacey said the police conducted an intensive investigation into the incident and even worked with other departments throughout the country.

The advertisement had stated that King's house was bombed and his wife and child were almost killed.

Police officer O. M. Strickland testified that he was one of the officers who arrested King for loitering around the city hall courtroom after he had been refused admittance because he did not produce a subpoena.

"Was King assaulted?" Nachman asked.

"No, he was not," Strickland replied emphatically.

Nachman then questioned Strickland as to his height and weight in relation to King's and solicited the information that the policeman was a smaller man.

THE ASSAULT QUESTION

The ad also charged that King's "person had been assaulted."

Another witness for the plaintiff, Dr. Frank R. Stewart, state superintendent of education, told the court that when nine students at Alabama State were expelled by the state board for disobeying the law during the demonstrations

the board heard no discussion about "singing on the capitol steps."

According to the advertisement in question, the expulsion came after students gathering at the capitol and sang "My Country, 'Tis of Thee."

YESTERDAY'S ACTION

Yesterday, attorneys for the Times began by calling witnesses to lay the groundwork for their suit.

Five witnesses testified they felt an ad soliciting funds for the defense of the Rev. Martin Luther King Jr. clearly reflected on Sullivan and his conduct of office, even though he was not specifically mentioned in the ad.

Attorneys representing The Times, however, managed to get most of these witnesses to concede that they never believed the statements which they felt referred to Sullivan and that they think no less of the police commissioner's integrity today as a result of the publication.

The first witnesses were Grover C. Hall Jr., editor of The Montgomery Advertiser; Arnold Blackwell, a real estate and insurance broker; Harry Kaminsky, sales manager of a downtown clothing store; William M. Parker, a service station operator, and H. M. Price Sr., who runs a food service equipment business.

SAY AD REFLECTED ON CITY

All made substantially the same testimony, that they felt the ad reflected on the city government and Sullivan in particular as police commissioner. Had they believed the statements to be true, Sullivan would have fallen in their estimation, they testified.

Sullivan's attorneys attempted to introduce evidence of racial tension that existed in Montgomery at the time the ad appeared. Advertiser Assistant Editor William H. McDonald was called to the stand to identify pictures of Negro demonstrations during March, but Judge Walter B. Jones ruled such evidence irrelevant and inadmissible.

There was one brief skirmish before testimony began.

When Atty. Calvin Whitesell, a city attorney representing Sullivan along with several others, began reading the

controversial advertisement, Negro Atty. V. Z. Crawford of Mobile objected that Whitesell was pronouncing the word "nigger" instead of "Negro," as it appeared in the ad.

Judge Jones asked Whitesell if he was indulging in "interpolations" in his pronunciation. Whitesell replied he was pronouncing the word as he had done "all my life."

To newsmen, he did not seem to be saying "higger," but something closer to "nigra" or "nigro."

SAY AD NOT LIBELOUS

The Times, represented by the Birmingham law firm of Beddow, Embry, and Beddow, does not contend the ad was entirely true. They do maintain, however, that it did not refer to any identifiable person nor is it libelous.

Further, they contend that it came from a reputable advertising agency and was signed by many persons of high character.

They cited several types of advertising which The Times will not accept. This was done to prove that the newspaper exercises diligent caution in screening out libelous, distasteful, and erroneous advertising.

Montgomery's other two commissioners, Mayor Earl James and Frank Parks, have also filed $500,000 suits against The Times.

[fol. 2055]

EXHIBIT IV TO MOTION OF DEFENDANTS THE NEW YORK TIMES FOR NEW TRIAL

ADVERTISER

Montgomery, Ala., Thursday Morning, November 3, 1960

WRITER OF AD TAKES STAND IN LIBEL TRIAL

By ARTHUR OSCOODE

Only closing arguments remain in the $500,000 libel suit against the New York Times by City Commissioner L. B. Sullivan, with all indication that the case will go to a Circuit Court jury Thursday.

Testimony was completed Wednesday night. Highlights included the appearance on the stand of the plaintiff, Sullivan, and a New York writer who said he helped write the advertisement that led to four local libel actions.

The latter, John Murray, who described himself as a former movie scenario writer and author of industrial and armed forces film scripts, appeared for the four Negro co-defendants.

All four—the Revs. Ralph Abernathy and Solomon Seay Sr., of Montgomery, Fred Shuttleworth of Birmingham, and J. E. Lowery of Mobile—had denied on the stand that they had any knowledge of the ad or had authorized use of their names in it.

SUDDEN "IDEA"

Murray said the names of the four appeared as a result of a sudden "idea" on the part of Bayard Rustin, professional organizer and a signer of the advertisement.

Rustin took the names from a list of ministers in the Southern Christian Leadership Conference, Murray related. He said Rustin felt it would not be necessary to seek the consent of the ministers because he felt sure they would approve the advertisement.

Earlier, said Murray, he and two other writers had written the advertisement from material furnished them by Rustin, which they sought to put in "an appealing form."

He told the court at the time he had no reason to believe the material was not accurate.

"COMPLETELY FALSE"

Sullivan called sections of the advertisement portraying suppression of Negro demonstrators at Alabama State College "completely false."

He added that, "I resent it very much."

Referring to a paragraph in which it was alleged that a college lunchroom was closed to starve students into submission

(See TIMES, Page 2A)

(Continued From Page 1)

Sullivan said that "in my opinion, it never happened in the city of Montgomery."

He also said it was false that Negro integration leader Martin Luther King had been arrested here several times on trumped-up offenses or been assaulted by a Montgomery policeman.

He singled out the statements alleging the arrests of King and the ringing of the college campus by "truckloads of police" as reflecting on his performance as police commissioner.

He said the advertisement was "associated with me when it describes police activities." He said he felt it "reflects on my ability, my integrity, and it has been established here that it is not true."

ILL AT EASE?

Sullivan was pressed by defense attorney Eric Embry as to whether he felt he had been damaged by the advertisement.

"Do you feel ill at ease in walking the streets of Montgomery?" asked Embry.

"No one has come up to me personally," answered Sullivan, but added that he did not know what effect the advertisement might have had on others.

But Sullivan conceded that the ad had not damaged his reputation in any obvious way or damaged his social life.

Negro attorney V. Z. Crawford of Mobile asked Sullivan if the suit was a basis for "statewide publicity for running for another office." But the question was ruled improper.

Three Times employes, including the secretary of the newspaper, Harding Bancroft, testified. Bancroft said that no retraction was made to Sullivan because it was believed that he had not been libeled in the ad.

But, he continued, a retraction was made in the case of Gov. John Patterson, because the paper did not intend "any reflection on the state of Alabama," of which the governor was "the embodiment."

EMPLOYES ON STAND

Defense attorneys placed two Times employes on the stand in an effort to show that the advertisement was accepted in good faith in the normal course of business.

D. V. Redding, manager of the Times advertising acceptability department, said it was the department's job to "screen the advertising" in an effort to keep out objectionable matter.

He approved the ad, he said, because it was signed by "a number of people who were well known and whose motives I had no reason to question."

He cited Dr. Harry Emerson Fosdick, Mrs. Franklin D. Roosevelt, Harry Belafonte, Sidney Poitier, Norman Thomas, Marlon Brando, and Mrs. Ralph Bunche.

But Redding conceded that it was "a fair statement" that he made no attempt to check the accuracy of the statements made.

Gershon T. Aronson of The Times advertising department said he took the order, for the ad, which was from Union Advertising Service, "a regularly recognized agency."

He also said he saw no reason to question the accuracy of the ad which he merely "scanned hurriedly."

Other witnesses, who appeared for the plaintiffs Wednesday, were City Det. Lt. E. Y. Lacy and Advertiser Managing Editor L. P. Patterson. Lacy said city police worked overtime to find who bombed the home of Martin Luther King.

SAW ADVERTISEMENT

Patterson said he saw the advertisement in the Times and noted some "facts that were strange to me—that I'd never heard of before." He said he put the ad on the desk of Grover C. Hall Jr., editor of The Advertiser.

The suit is over an advertisement that sought funds to defend Martin Luther King at his perjury trial here. Dr. King was subsequently acquitted of lying about his income on a state income tax return.

Incidents referred to in the ad concern events that followed an attempt by Alabama State College students to seek service in a courthouse snack bar, including demonstrations at the Capitol and on the college campus.

Suits were also brought over the ad by City Commissioners Earl James and Frank Parks, also for $500,000 each, and by Gov. John Patterson, for one million dollars.

The Sullivan suit will be resumed before Judge Walter B. Jones at 9:30 a.m. Thursday.

[fol. 2056]

EXHIBIT V TO MOTION OF DEFENDANTS THE NEW YORK TIMES FOR NEW TRIAL

Alabama Journal—November 3, 1960

OPPOSING SIDES GIVE FINAL ARGUMENTS IN TIMES LIBEL SUIT

JURY EXPECTED TO GET CASE SOMETIME THIS AFTERNOON

By JUDITH BUSHIN
Journal Staff Writer

Attorneys for Commissioner L. B. Sullivan, for The New York Times, and for four Alabama Negroes hammered away at their opposition in final jury arguments today in an attempt to get a verdict for their clients. The case was expected to go to the jury this afternoon.

Robert E. Steiner III, speaking for Sullivan, re-emphasized that the commissioner is asking for $500,000 for the libelous statements he says The Times printed about him in an advertisement.

Negro attorney Fred Gray, representing the four Negroes who allegedly endorsed the ad, maintained that Sullivan's attorneys "failed miserably" to prove that the ministers actually endorsed the ad or knew anything about it."

THEY DIDN'T "TRACT"

In a question which drew laughter from attorneys and spectators Gray asked the jury, "How could these individual defendants retract something—if you'll pardon the expression—they didn't tract?"

T. Eric Embry, a Birmingham attorney representing The Times, shouted to the jury, "Where is the evidence that has shown you that Mr. Sullivan suffered any injury?

"Has Mr. Sullivan suffered or has possibly his standing in the community been enhanced?"

ONLY WAY TO IMPRESS

Steiner, in his opening remarks, said the only way to impress on The Times or any other newspaper or magazine

that they must tell the truth is to "hit them in the pocketbook."

He then pointed out the falsity of certain statements contained in the full page ad which ran March 29 to solicit funds for the defense of Negro integration leader Martin Luther King in his perjury trial here.

"They couldn't even get the song right," he said, referring to a statement in the advertisement that Alabama State College students sang "My Country, 'Tis of Thee" on the Capitol steps.

Steiner said one of the Times' correspondents reported that the song was "The National Anthem."

He also attacked the statement concerning police "ringing" the campus with shotguns and tear gas by saying, "It would take thousands of police probably to ring the campus—approximately 12 square blocks."

As to the reference in the ad to "state authorities padlocking the dining room in an attempt to starve the students into submission," he shouted, "That didn't even happen. They couldn't prove it."

"ATTACKED SULLIVAN"

Steiner also mentioned a statement about King's house being bombed and said although Sullivan was not in office when the bombings occurred, "the ad doesn't say so—it was designed to attack the present city commission."

"Let The Times explain to you who in the world they were talking about if it wasn't the city commissioners of Montgomery," he told the jury.

In winding up his argument, Steiner said the fact that the names of two Negroes from Montgomery (Ralph D. Abernathy and S. S. Seay Sr.) were placed on the ad was "proof positive the ad was talking about Mr. Sullivan."

Gray referred to his clients in the case, Abernathy, Seay, J. E. Lowery of Mobile and Fred Shuttlesworth of Birmingham, as "the forgotten defendants in this case."

"They had no business in the case in the first place," he said.

Gray told the jurors the testimony conclusively shows the Negro defendants didn't know their names were on the ad or that the ad was even going to be published.

He said only one witness for Sullivan or for The Times mentioned his clients and that was Sullivan himself, who

said he had sent letters to the four Negroes asking for a retraction.

Embry contended that The Times took all precautions a "normal human being" would take before accepting the advertisement and said Sullivan's attorneys were suggesting that a newspaper "set up some superhuman system" to screen advertising.

He told the jury the only statement in the ad which was not substantially correct was the one referring to padlocking the college dining hall and "that statement could not possibly have referred to Sullivan," he said.

Embry also accused Steiner of "appealing to every base motive in man by snide references to people living in other parts of the country."

Attorneys for The Times Wednesday called three employes of the newspaper to testify to the effect that The Times accepted in good faith the ad which prompted the Sullivan suit and similar legal action by two other city commissioners and the governor.

CONFLICTING TESTIMONY

Though Times attorneys produced evidence that a noted Negro leader, A. Philip Randolph, had notified the newspaper that the endorsers of the ad had consented to use of their names, Negro attorneys for the four drew conflicting testimony.

New York Writer Jon Murray testified that names of the four Alabama Negro defendants were not in the list originally covered by a letter from Randolph. He said their names were added by Bayard Rustin of New York, executive director of the Committee to Defend Martin Luther King, which sponsored the advertisement.

Last witness of the day was Harding Bancroft, secretary of The New York Times Co., called by Times attorneys. He testified that the newspaper considered the ad as having no reference, direct or indirect, to Sullivan.

Times advertising salesman Gershon T. Aronson and D. Vincent Redding, manager of the newspaper's advertising acceptability department, testified that they found no reason to question the advertisement.

Redding said he depended on reputations of some endorsers of the ad in determining its reliability.

[fol. 2057]

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY

No. 27416

CONTINUANCE OF MOTION—December 1, 1960

The above and foregoing motion for new trial was duly presented to me, the undersigned Judge of said court, on the 1st day of December, 1960, and by me the same is hereby continued to the 16th day of December, 1960, at 10:00 o'clock A. M., and execution is hereby ordered stayed for the collection of any judgment or court costs in said cause pending the final disposition of said motion.

Done and ordered this 1 day of December, 1960.

Walter B. Jones, Circuit Judge.

Certificate of service (omitted in printing).

[File endorsement omitted]

[fol. 2057a]

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

Court Met Pursuant to Adjournment

Present the Honorable Walter B. Jones, Judge Presiding

[Title omitted]

ORDER OF COURT CONTINUING MOTION FOR NEW TRIAL—December 16, 1960

This day came the plaintiff by attorney and came also the New York Times by attorneys and it is considered and ordered by the Court that the motion of the New York Times to set aside the verdict of the jury heretofore rendered in this cause and the judgment of the Court entered thereon and to grant it a new trial herein be and the same is hereby continued for hearing at 10:00 A. M. on January 14, 1961.

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

Court Met Pursuant to Adjournment

Present the Honorable Walter B. Jones, Judge Presiding

[Title omitted]

ORDER OF COURT CONTINUING MOTION FOR NEW TRIAL—January 14, 1961

This day came the plaintiff by attorney and came also the New York Times by attorneys and it is considered and ordered by the Court that the motion of the New York Times to set aside the verdict of the jury heretofore rendered in this cause and the judgment of the Court entered thereon and to grant it a new trial herein be and the same is hereby continued for hearing at 10:00 A.M. on February 10, 1961.

[fol. 2057b]

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

Court Met Pursuant to Adjournment

Present the Honorable Walter B. Jones, Judge Presiding

[Title omitted]

ORDER OF COURT CONTINUING MOTION FOR NEW TRIAL—February 10, 1961

This day came the plaintiff by attorney and came also the New York Times by attorneys and it is considered and ordered by the Court that the motion of the New York Times to set aside the verdict of the jury heretofore rendered in this cause and the judgment of the Court entered thereon and to grant it a new trial herein be and the same is hereby continued for hearing at 10:00 A. M. on March 3, 1961.

[fol. 2057c]

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

AT LAW

No. 27416

[Title omitted]

AMENDMENT TO DEFENDANT'S, THE NEW YORK TIMES COMPANY, A CORPORATION, MOTION FOR NEW TRIAL—Filed March 3, 1961

Comes the defendant, The New York Times Company, a corporation, in the above styled cause and with leave of the court first being had and obtained, amends its motion for new trial in said cause as follows:

1. By striking therefrom grounds numbered 4 and 23.

2. By substituting for the words "Article 1, Section 11 of the Constitution of Alabama 1901," everywhere the same appear in ground No. 183, the words "Article 1, Section 6 of the Constitution of Alabama 1901".

Beddow, Embry and Beddow, By: /s/ Roderick M. MacLeod, Jr., Attorneys for Defendant, The New York Times Company, a corporation.

[File endorsement omitted]

[fol. 2057d]

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

Court Met Pursuant to Adjournment

Present the Honorable Walter B. Jones, Judge Presiding

[Title omitted]

ORDER OF COURT TAKING MOTION FOR NEW TRIAL UNDER CONSIDERATION—March 3, 1961

The motion of the Defendant, The New York Times, a corporation, to set aside the verdict of the jury rendered in this case on November 3rd, 1960 and to grant this defendant a new trial, now coming on regularly to be heard

before the Court, the said motion is argued by Counsel for the respective parties and submitted for decision by the Court and the Court does now take said motion under consideration.

This the 3rd day of March, 1961.

Walter B. Jones, Circuit Judge Presiding.

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

Court Met Pursuant to Adjournment

Present the Honorable Walter B. Jones, Judge Presiding

[Title omitted]

ORDER OF COURT DENYING MOTION OF NEW YORK TIMES COMPANY FOR A NEW TRIAL—March 17, 1961

Upon consideration of the Motion of the defendant, the New York Times Company for a new trial, and same having been argued to the Court and submitted for decision, the Court is of opinion that the said motion for a new trial is not well taken. It is, therefore,

Considered, ordered and adjudged by the Court that the motion of the New York Times Company for a new trial be and the same is hereby denied.

Dated at Montgomery this March 17, 1961.

Walter B. Jones, Circuit Judge Presiding.

[fol. 2058]

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

MOTION OF DEFENDANT, RALPH D. ABERNATHY FOR NEW TRIAL—Filed December 2, 1960

Comes now the Defendant, Ralph D. Abernathy, in the above styled cause and moves the Court to set aside the verdict of the jury heretofore returned and the judgment rendered thereon in this Court on, to-wit: November 3, 1960, and to grant a new trial of the issues herein and, as

grounds therefor, sets forth and assigns, separately and severally, the following:

1. For that during the trial an error of law occurred which was excepted to by the defendant, in that the Court refused to give the following written charge requested by the Defendant in the cause:

Charge No. 1. I charge you gentlemen of the jury, to find a verdict in favor of the Defendant, Ralph D. Abernathy.

2. For that during the trial an error of law occurred which was excepted to by the defendant, in that the Court refused to give the following written charge requested by the defendant in the cause:

Charge No. 2. I charge you, gentlemen of the jury, that if you find that the defendant, Ralph D. Abernathy did not authorize the publication of the article in question which appeared in the New York Times on Tuesday, March 29, 1960, you must find a verdict in favor of him.

3. For that during the trial an error of law occurred which was excepted to by the defendant, in that the Court refused to give the following written charge requested by the defendant in the cause:

Charge No. 3. I charge you, gentlemen of the jury, that if you find that the defendant, Ralph D. Abernathy, did not consent to the publication of the article in question which appeared in the New York Times on Tuesday, March 29, 1960, you must find a verdict in favor of him."

4. For that during the trial an error of law occurred which was excepted to by the defendant, in that the Court refused to give the following written charge requested by the defendant in the cause:

Charge No. 4. I charge you, gentlemen of the jury, that if you find that the defendant, Ralph D. Abernathy, did not publish or cause to be published the article in question which appeared in the New York Times on Tuesday, March 29, 1960, you must find a verdict in favor of him."

5. For that during the trial an error of law occurred which was excepted to by the defendant, in that the Court refused to give the following written charge requested by the defendant in the cause:

Charge No. 5. I charge you, gentlemen of the jury, that if you find that the defendant, Ralph D. Abernathy did not [fol. 2059] authorize anyone to publish on his behalf the article in question which appeared in the New York Times on Tuesday, March 29, 1960, you must find a verdict for him.

6. For that during the trial an error of law occurred which was excepted to by the defendant, in that the Court refused to give the following written charge requested by the defendant in the cause:

Charge No. 6. I charge you, gentlemen of the jury, that if from the evidence you find that the defendant, Ralph D. Abernathy, did not, either directly or through some other person authorized to act for him, publish or consent to the publication of the statements complained of in the New York Times on Tuesday, March 29, 1960, you must find a verdict in favor of him.

7. For that during the trial an error of law occurred which was excepted to by the defendant, in that the Court refused to give the following written charge requested by the defendant in the cause:

Charge No. 8. I charge you, gentlemen of the jury, that unless from the evidence you are convinced that the defendant, Ralph D. Abernathy, was the author or the publisher of the advertisement which appeared in the New York Times (the subject matter of this suit) on Tuesday, March 29, 1960, you must return a verdict for said defendant.

8. For that during the trial an error of law occurred which was excepted to by the defendant, in that the Court refused to give the following written charge requested by the defendant in the cause:

Charge No. 9. I charge you, gentlemen of the jury, to constitute a libel, there must be a publication as well as a

writing, and if the publication was made without the consent of the defendant, Ralph D. Abernathy, the offense is not complete as to him and you must return a verdict in favor of him.

9. For that during the trial an error of law occurred which was excepted to by the defendant, in that the Court refused to give the following written charge requested by the defendant in the cause:

Charge No. 11. I charge you, gentlemen of the jury, that if you find from the evidence that the defendant, Ralph D. Abernathy, had no knowledge of the writing or publication of the advertisement, prior to publication, that appeared in the New York Times, dated, Tuesday, March 29, 1960, you must return a verdict for the said defendant.

10. For that during the trial an error of law occurred which was excepted to by the defendant, in that the Court refused to give the following written charge requested by the defendant in the cause:

Charge No. 12. I charge you, gentlemen of the jury, that [fol. 2060] the burden of proof is upon the plaintiff to reasonably satisfy you from the evidence in this case that the defendant, Ralph D. Abernathy directly, or indirectly, or through some other person authorized to act for him, published or consented to the publication of the statements complained of which appeared in the New York Times on March 29, 1960, and unless from the evidence you are convinced that said defendant did directly or indirectly or through some other person authorized to act for him, published or consented to the publication of said statements, then you must return a verdict for the defendant, Ralph D. Abernathy.

11. For that during the trial an error of law occurred which was excepted to by the defendant, in that the Court refused to give the following written charge requested by the defendant in the cause:

Charge No. 13. I charge you, gentlemen of the jury, that if you believe from the evidence that the defendant, Ralph D. Abernathy, did Not authorize the use of his name in

connection with the publication of the advertisement which appeared in the New York Times on March 29, 1960, you must return a verdict for said defendant.

12. For that during the trial an error of law occurred which was excepted to by the defendant, in that the Court refused to give the following written charge requested by the defendant in the cause:

Charge No. 14. Gentlemen of the jury, if you believe from the evidence that the defendant, Ralph D. Abernathy, did not consent to the use of his name in connection with the publication of the advertisement which appeared in the New York Times on March 29, 1960, you must return a verdict for said defendant.

13. For that during the trial an error of law occurred which was excepted to by the defendant, in that the Court refused to give the following written charge requested by the defendant in the cause:

Charge No. 16. I charge you, gentlemen of the jury, if from the evidence you believe that the defendant, Ralph D. Abernathy, did not publish or cause to be published the alleged libelous matter contained in the advertisement which appeared in the New York Times on March 29, 1960, then, as a matter of law, there was no legal obligation on the part of this defendant to reply to the letter written by the plaintiff to this defendant demanding a retraction of the alleged libelous matters, and you must return a verdict for said defendant.

14. For that during the trial an error of law occurred which was excepted to by the defendant, in that the Court refused to give the following written charge requested by the defendant in the cause:

Charge No. 17. I charge you, gentlemen of the jury, that [fol. 2061] if from the evidence you believe that the defendant never authorized anyone to affix his name to the advertisement which is the subject matter of this suit, and if you further believe from the evidence that the plaintiff wrote a letter to the defendant demanding a retraction of certain alleged libelous matter contained in said advertise-

ment, and if you further believe from the evidence that the defendant did not reply to the plaintiff's letter, I charge you as a matter of law that the defendant's failure to reply to plaintiff's letter cannot be considered by you as an admission that he published the alleged libelous matter; under such circumstances the law does not require the defendant to reply to plaintiff's letter, and you must return a verdict for the defendant, Ralph D. Abernathy.

15. For that during the trial an error of law occurred which was excepted to by the defendant, in that the Court refused to give the following written charge requested by the defendant in the cause:

Charge No. 18. Gentlemen of the jury, if you believe the evidence in this case, you must return a verdict for the defendant, Ralph D. Abernathy.

16. For that during the trial an error of law occurred which was excepted to by the defendant, in that the Court refused to give the following written charge requested by the defendant in the cause:

Charge No. 19. Gentlemen of the jury, unless from the evidence you are convinced that the defendant, Ralph D. Abernathy, consented to the use of his name in connection with the publication of the advertisement complained of, you must find for said defendant.

17. For that during the trial an error of law occurred which was excepted to by the defendant, in that the Court refused to give the following written charge requested by the defendant in the cause:

Charge No. 20. I charge you, gentlemen of the jury, that unless on the evidence you are convinced that the defendant had knowledge of the writing or publication of the advertisement complained of, prior to publication in the New York Times, dated Tuesday, March 29, 1960, you must find for the defendant.

18. For that during the trial an error of law occurred which was excepted to by the defendant, in that the Court gave the following oral charge to the jury: "Now, the Court is of the opinion and so charges you, gentlemen of the

jury, that the matter complained of in Plaintiff's Exhibit No. 347, that's the controversial ad which you will have before you, and parts of which are set out in the Counts here in the Complaint, belongs to that class of defamation called in law, libel per se."

19. For that during the trial an error of law occurred which was excepted to by the defendant, in that the Court gave the following oral charge to the jury: "We can say, [fol. 2062] as part of the law in this case, that a publication is libelous per se when they are such as to degrade the plaintiff in the estimation of his friends and the people of the place where he lives, as injure him in his public office, or impute misconduct to him in his office, or want of official integrity, or want of fidelity to a public trust or such as will subject the plaintiff to ridicule or public distrust; All those kind of charges are called, libelous per se."

20. For that during the trial an error of law occurred which was excepted to by the defendant, in that the Court gave the following oral charge to the jury: "Now, it is the contention of the plaintiff here that although you may believe, as to the four individual defendants, that they did not sign this advertisement and did not authorize it, yet it is the contention of the plaintiff, Sullivan, that the four individuals, the four individual defendants after knowing of the publication of the advertisement and after knowing of its content, ratified the use of their names, that is, they approved and sanctioned this advertisement. In other words, the plaintiff, Sullivan, insists that there was a ratification of the advertisement and the use of their names as signers of the advertisement by the four individual defendants and we here define ratification as the approval by a person of a prior act which did not bind him but which was professedly done on his account or in his behalf whereby the act, the use of his name, the publication, is given effect as if authorized by him in the very beginning. Ratification is really the same as a previous authorization and is a confirmation or approval of what has been done by another on his account. Now it is for you twelve jurors to say from all the evidence whether the four defendants ratified the

advertisement now before you, that is, ratified that advertisement as I have defined the word ratification to you."

21. For that during the trial an error of law occurred which was excepted to by the defendant, in that the Court gave the following oral charge to the jury: "We here define ratification as the approval by a person of a prior act which did not bind him but which was professedly done on his account or in his behalf whereby the act, the use of his name, the publication, is given effect as if authorized by him in the very beginning."

22. The Court erred in overruling defendant's demurrers to the complaint and to each count thereof.

23. The Court erred in overruling defendant's amended demurrers to the complaint and to each count thereof.

24. The Court erred in denying and overruling defendant's motion to exclude plaintiff's evidence, said motion having been made at the conclusion of the plaintiff's [fol. 2063] case.

25. The Court erred in denying and overruling the defendant's motion to exclude the plaintiff's evidence, said motion having been made at the conclusion of the introducing of all of the evidence in the case.

26. There existed an irregularity in the proceedings of the Court by which the party defendant was prevented from having a fair trial in that the Court is a member of the Board of Jury Supervisor of Montgomery, Alabama; and that said Board selected jurors pursuant to Act No. 118 of March 8, 1939, said Act being unconstitutional, said selection of jurors thereunder by the Court being in violation of Article I, Section 11 of Alabama Code of 1901 and the Code of Alabama (1940) Title 7, Section 260, in that the Court as a member of the Board by so selecting those persons who are to decide the case decided both the facts and the law.

27. There existed an irregularity in the proceedings of the Court by which the party defendant was prevented from having a fair trial in that defendant was subjected to the exercise of judicial power before a tribunal which required

its very facilities to be segregated on the basis of race and color and that the imposition of judicial power upon defendant in a segregated tribunal denied to defendant his right to due process and equal protection of the law as guaranteed him under the Alabama and Federal Constitutions.

28. There existed an irregularity in the proceedings of the Court which prevented the party defendant from having a fair trial in that Alabama's Constitutional Amendment of 1859 required the popular election of judges, said amendment being codified in Section 152 of the Alabama Constitution of 1901, and that under Section 152 of a judge's lawful election to the court by all qualified electors is constitutionally pre-requisite to the lawful exercise of judicial power vested in the Court by Article 6, Section 139 of the Alabama Constitution; that said Negro defendant is a member of a class of eligible qualified electors, and that Negroes have been intentionally, and systematically excluded from participating in the electoral selection of judges required by Section 152 of the Alabama Constitution and as a consequence thereof the imposition of judicial power over defendant Negro member of said systematically excluded class of qualified electors by a judge not lawfully elected results in a taking of defendant's property without due process of law as guaranteed to defendant under the constitution and laws of the State of Alabama, and the Federal Constitution; and deprives defendant of the equal protection of the law guaranteed him under the Fourteenth Amendment to the United States Constitution.

29. The record is so devoid of evidentiary support of the allegations alleged in the complaint, in that the plaintiff having failed to present any evidence upon which it could [fol. 2064] rationally be found that this defendant was legally responsible for the publication of the advertisement which is the basis of this suit, the verdict of the jury and the judgment of the court against the defendant in the amount of $500,000.00 deprived the defendant of due process of law in violation of the Constitution and laws of the State of Alabama.

30. The record is so devoid of evidentiary support of the allegations alleged in the complaint, in that the plaintiff

having failed to present any evidence upon which it could rationally be found that this defendant was legally responsible for the publication of the advertisement which is the basis of this suit, the verdict of the jury and the judgment of the Court against the defendant in the amount of $500,000.00 deprived the defendant of due process of law in violation of the Fourteenth Amendment to the United States Constitution.

31. The record is so devoid of evidentiary support of the allegations alleged in the complaint, in that the plaintiff having failed to present any evidence upon which it could rationally be found that this defendant was legally responsible for the publication of the advertisement which is the basis of this suit, the verdict of the jury and the judgment of the court against the defendant in the amount of $500,000.00 deprived this defendant of his property without due process of law in violation of the Fourteenth Amendment to the United States Constitution.

32. The verdict of the jury and the decision of the Court against the defendant in the amount of $500,000.00 is not supported by any evidence, and, as such, it deprives the defendant of his property without due process of law in violation of the Fourteenth Amendment to the United States Constitution.

33. The verdict of the jury and the decision of the court were not sustained by the great preponderance of the evidence.

34. The verdict of the jury and the decision of the court were not sustained by the great preponderance of the evidence as follows:

(a) The evidence showed clearly that the defendant did not publish nor cause to be published the advertisement which is the basis of this suit.

(b) The evidence showed clearly that defendant did not give his consent for his name to be placed on the advertisement, which advertisement is the basis of this suit.

(c) The evidence showed clearly that defendant had no prior knowledge that said advertisement was going to be published.

(d) The plaintiff's evidence failed to show any causal connection between the defendant and the alleged libelous matter stated in the complaint.

(e) There is no evidence in the record to show that the [fol. 2065] defendant ratified the alleged libelous matter contained in the complaint.

35. That the verdict of the jury and the decision of the court is contrary to law in that plaintiff is an official of the government of Alabama, and that the institution of this libel action for alleged defamation of plaintiff governmental official and the consequent imposition of damages upon defendant is an unconstitutional use of the judicial machinery of the State of Alabama infringing upon defendant's freedom of speech and association, violative of defendant's constitutional right under the First Amendment as incorporated into the Fourteenth Amendment to the Federal Constitution, in that said judgment of the court was imposed on defendant because of his well known past and present activities and views on civil rights, said view being diametrically opposed to those of plaintiff; said decision of the court having the practical effect of deterring and/or discouraging defendant's exercise of his constitutionally protected political rights of speech, press and association.

36. For that the verdict of the jury is contrary to the law and evidence in the case.

37. For that the verdict of the jury is not sustained by the great preponderance of the evidence and is contrary to both the law and the facts in the case.

38. For that the verdict of the jury is contrary to the law in the case.

39. For that the verdict of the jury is contrary to the facts in the case.

40. For that the verdict of the jury and the judgment entered thereon are contrary to the great weight and preponderance of the evidence in the case.

41. For that the verdict of the jury is excessive in that it is reported to have been the largest verdict ever rendered by a jury in the State of Alabama.

42. For that the verdict of the jury is so excessive as to shock the conscience of the court and was a result of bias, passion, and prejudice against the defendants.

43. For that the verdict of the jury is excessive and a result of bias passion and prejudice against the defendants.

44. There existed an irregularity in the proceedings of the Court by which the party defendant was prevented from having a fair trial.

45. There existed an irregularity in the proceedings of the jury by which the party defendant was prevented from having a fair trial.

46. There existed an irregularity in the proceedings by the prevailing party, by which the defendant was prohibited from having a fair trial.

47. There existed an irregularity in an order of the Court by which the defendant was prevented from having a fair trial.

48. There existed in the case an abuse of discretion of [fol. 2066] the Court by which the defendant was prevented from having a fair trial.

49. The jury in the cause was guilty of a misconduct during the trial of the case.

50. The prevailing party was guilty of misconduct in the trial of the case.

51. For that during the trial an error of law occurred which was excepted to by the defendant.

52. For that during the trial an error of law occurred which was excepted to by the defendant, that is the failure of the Court to make special findings of the issues of the cause in the case after being asked to do so by the defendant in the cause.

53. For that the Court abused its discretion in denying the defendant's request for special findings of the issues in this cause in that the defendant requested that compensatory damages and punitive damages be assessed separately in the cause and the Court refused defendant's request for

such separate findings and the defendant was thereby prevented from having a fair trial of this cause.

54. For that the Court abused its discretion in denying the defendant's request for special findings of the issues in this cause.

55. For that all of the evidence produced at the trial relating to damages indicated that the plaintiff suffered no damage as a result of any action on the part of this defendant.

56. For that the trial Court erred in admitting in evidence over the defendant's objection the testimony of the plaintiff's witness, Grover Hall, as to his opinion that the advertisement, which advertisement is the basis of this suit, was of and concerning the plaintiff and his opinion as to other matters, which matters will more fully appear from the transcript of the record, which record has not been completed by the court reporter as of this date.

57. For that the trial court erred in admitting in evidence over the defendant's objection the testimony of the plaintiff's witness Arnold Blackwell as to his opinion that the advertisement, which advertisement is the basis of this suit, was of and concerning the plaintiff and his opinion as to other matters, which matters will more fully appear from the transcript of the record, which record has not been completed by the court reporter as of this date.

58. For that the trial court erred in admitting in evidence over the defendant's objection the testimony of the plaintiff's witness Mr. William McDonald as to his opinion that the advertisement, which advertisement is the basis of this suit, was of and concerning the plaintiff and his [fol. 2067] opinion as to other matters, which matters will more fully appear from the transcript of the record, which record has not been completed by the court reporter as of this date.

59. For that the trial court erred in admitting in evidence over the defendant's objection the testimony of the plaintiff's witness Mr. Harry Kaminsky as to his opinion that the advertisement, which advertisement is the basis of

this suit, was of and concerning the plaintiff and his opinion as to other matters, which matters will more fully appear from the transcript of the record, which record has not been completed by the court reporter as of this date.

60. For that the trial court erred in admitting in evidence over the defendant's objection the testimony of the plaintiff's witness Mr. H. M. Price, Sr., as to his opinion that the advertisement, which advertisement is the basis of this suit, was of and concerning the plaintiff and his opinion as to other matters, which matters will more fully appear from the transcript of the record, which record has not been completed by the court reporter as of this date.

61. For that the trial court erred in admitting in evidence over the defendant's objection the testimony of the plaintiff's witness, Mr. William Parker, as to his opinion that the advertisement, which advertisement is the basis of this suit, was of and concerning the plaintiff and his opinion as to other matters, which matters will more fully appear from the transcript of the record, which record has not been completed by the court reporter as of this date.

62. For that the trial court erred in admitting in evidence over the defendant's objection the testimony of the plaintiff's witness, Mr. Horace D. White, as to his opinion that the advertisement, which advertisement is the basis of this suit, was of and concerning the plaintiff and his opinion as to other matters, which matters will more fully appear from the transcript of the record, which record has not been completed by the court reporter as of this date.

Respectfully submitted,

Fred D. Gray, 34 North Perry Street, Montgomery, Alabama;

Vernon Z. Crawford, 570 Davis Avenue, Mobile, Alabama;

Solomon S. Seay, Jr., 29 N. McDonough St., Montgomery, Alabama

Attorneys for Defendant

By: Solomon S. Seay, Jr. Attorney for named Defendant.

[fol. 2068] [File endorsement omitted]

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

CONTINUANCE OF MOTION—December 2, 1960

The foregoing motion was presented to me on this the 2d day of December, 1960, and it is hereby continued to the 16 day of December, 1960, at 11 A.M., for hearing. Execution is hereby stayed by the Court during the pendency of this motion.

Walter B. Jones, Circuit Judge. 15th Judicial Circuit of Alabama.

Certificate of service (omitted in printing).

December 16, 1960. Motion continued for hearing at 10:00 A.M. January 14, 1961.

Walter B. Jones, Judge.

[fol. 2069]

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

Court Met Pursuant to Adjournment

Present the Honorable Walter B. Jones, Judge Presiding

[Title omitted]

ORDER CONTINUING MOTION FOR NEW TRIAL—December 16, 1960

This day came the parties by attorneys and the motion of the defendant, Ralph D. Abernathy, to set aside the verdict of the jury and the judgment of the Court entered thereon and to grant him a new trial herein, be and the same is hereby continued until January 14, 1961 at 10:00 A.M.

[fol. 2070]

MOTION OF DEFENDANT, J. E. LOWERY FOR NEW TRIAL—
Filed December 2, 1960

Comes now the defendant, J. E. Lowery, in the above styled cause and moves the Court to set aside the verdict of the jury heretofore returned and the judgment rendered thereon in this Court on, to-wit: November 3, 1960, and to grant a new trial of the issues herein and, as grounds, therefor, set forth and assigns, separately and severally, the following:

1. For that during the trial an error of law occurred which was excepted to by the defendant, in that the Court refused to give the following written charge requested by the defendant in the cause:

"Charge No. 1. I charge you, gentlemen of the jury, to find a verdict in favor of the defendant, J. E. Lowery.

2. For that during the trial an error of law occurred which was excepted to by the defendant, in that the Court refused to give the following written charge requested by the defendant, in the cause:

"Charge No. 2. I charge you, gentlemen of the jury, that if you find that the defendant, J. E. Lowery, did not authorize the publication of the article in question which appeared in the New York Times on Tuesday, March 29, 1960, you must find a verdict in favor of him."

3. For that during the trial an error of law occurred which was excepted to by the defendant, in that the Court refused to give the following written charge requested by the defendant in the cause:

"Charge No. 3. I charge you, gentlemen of the jury, that if you find that the defendant, J. E. Lowery did not consent to the publication of the article in question which appeared in the New York Times on Tuesday, March 29, 1960, you must find a verdict in favor of him."

4. For that during the trial an error of law occurred which was excepted to by the defendant, in that the Court

refused to give the following written charge requested by the defendant in this cause:

"Charge No. 4. I charge you, gentlemen of the jury, that if you find that the defendant, J. E. Lowery did not publish or cause to be published the article in question which appeared in the New York Times on Tuesday, March 29, 1960, you must find a verdict in favor of him."

5. For that during the trial an error of law occurred which was excepted to by the defendant, in that the Court refused to give the following written charge requested by the defendant in the cause:

"Charge No. 5. I charge you, gentlemen of the jury, that if you find that the defendant, J. E. Lowery did not authorize anyone to publish on his behalf the article in question which appeared in the New York Times on Tuesday, March 29, 1960, you must find a verdict for him".

[fol. 2071] 6. For that during the trial an error of law occurred which was excepted to by the defendant, in that the Court refused to give the following written charge requested by the defendant in the cause:

"Charge No. 6. I charge you, gentlemen of the jury, that if from the evidence you find that the defendant, J. E. Lowery, did not, either directly or through some other person authorized to act for him, publish or consent to the publication of the statements complained of in the New York Times on Tuesday, March 29, 1960, you must find a verdict in favor of him."

7. For that during the trial an error of law occurred which was excepted to by the defendant, in that the Court refused to give the following written charge requested by the defendant in the cause:

"Charge No. 8. I charge you, gentlemen of the jury, that unless from the evidence you are convinced that the defendant, J. E. Lowery was the author or the publisher of the advertisement which appeared in the New York Times (the subject matter of this suit) on Tuesday, March 29, 1960, you must return a verdict for said defendant."

8. For that during the trial an error of law occurred which was excepted to by the defendant, in that the Court refused to give the following written charge requested by the defendant in the cause:

"Charge No. 9. I charge you, gentlemen of the jury, to constitute a libel, there must be a publication as well as a writing, and if the publication was made without the consent of the defendant, J. E. Lowery, the offense is not complete as to him and you must return a verdict in favor of him."

9. For that during the trial an error of law occurred which was excepted to by the defendant, in that the Court refused to give the following written charge requested by the defendant in the cause:

"Charge No. 11. I charge you, gentlemen of the jury, that if you find from the evidence that the defendant, J. E. Lowery, had no knowledge of the writing or publication of the advertisement, prior to publication, that appeared in the New York Times, dated Tuesday, March 29, 1960, you must return a verdict for the said defendant."

10. For that during the trial an error of law occurred which was excepted to by the defendant, in that the Court refused to give the following written charge requested by the defendant in the cause:

"Charge No. 12. I charge you, gentlemen of the jury, that the burden of proof is upon the plaintiff to reasonably satisfy you from the evidence in this case that the defendant, J. E. Lowery directly, or indirectly or through some other person authorized to act for him, published or consented to the publication of the statements complained of which appeared in the New York Times on March 29, 1960, and unless from the evidence you are convinced that said [fol. 2072] defendant did directly or indirectly or through some other person authorized to act for him, published or consented to the publication of said statements, then you must return a verdict for the defendant, J. E. Lowery."

11. For that during the trial an error of law occurred which was excepted to by the defendant, in that the Court

refused to give the following written charge requested by the defendant in the cause:

"Charge No. 13. I charge you, gentlemen of the jury, that if you believe from the evidence that the defendant, J. E. Lowery, did not authorize the use of his name in connection with the publication of the advertisement which appeared in the New York Times on March 29, 1960, you must return a verdict for said defendant."

12. For that during the trial an error of law occurred which was excepted to by the defendant, in that the court refused to give the following written charge requested by the defendant in the cause:

"Charge No. 14. Gentlemen of the jury, if you believe from the evidence that the defendant, J. E. Lowery, did not consent to the use of his name in connection with the publication of the advertisement which appeared in the New York Times on March 29, 1960, you must return a verdict for said defendant."

13. For that during the trial an error of law occurred which was excepted to by the defendant, in that the Court refused to give the following written charge requested by the defendant in the cause:

"Charge No. 16. I charge you, gentlemen of the jury, if from the evidence you believe that the defendant, J. E. Lowery did not publish or cause to be published the alleged libelous matter contained in the advertisement which appeared in the New York Times on March 29, 1960, then, as a matter of law, there was no legal obligation on the part of this defendant to reply to the letter written by the plaintiff to this defendant demanding a retraction to the alleged libelous matters, and you must return a verdict for said defendant."

14. For that during the trial an error of law occurred which was excepted to by the defendant, in that the Court refused to give the following written charge requested by the defendant in the cause:

"Charge No. 17. I charge you, gentlemen of the jury, that if from the evidence you believe that the defendant never

authorized anyone to affix his name to the advertisement which is the subject matter of this suit, and if you further believe from the evidence that the plaintiff wrote a letter to the defendant demanding a retraction of certain alleged libelous matter contained in said advertisement, and if you further believe from the evidence that the defendant [fol. 2073] did not reply to the plaintiff's letter, I charge you as a matter of law that the defendant's failure to reply to plaintiff's letter cannot be considered by you as an admission that he published the alleged libelous matter; under such circumstances the law does not require the defendant to reply to plaintiff's letter, and you must return a verdict for the defendant, J. E. Lowery."

15. For that during the trial an error of law occurred which was excepted to by the defendant, in that the Court refused to give the following written charge requested by the defendant in the cause:

"Charge No. 18. Gentlemen of the jury, if you believe the evidence in this case, you must return a verdict for the defendant, J. E. Lowery."

16. For that during the trial an error of law occurred which was excepted to by the defendant, in that the Court refused to give the following written charge requested by the defendant in the cause:

"Charge No. 19. Gentlemen of the jury, unless from the evidence, you are convinced that the defendant, J. E. Lowery, consented to the use of his name in connection with the publication of the advertisement complained of, you must find for said defendant."

17. For that during the trial an error of law occurred which was excepted to by the defendant, in that the Court refused to give the following written charge requested by the defendant in the cause:

"Charge No. 20. I charge you gentlemen of the jury, that unless on the evidence you are convinced that the defendant, had knowledge of the writing or publication of the advertisement complained of, prior to publication in the New York Times, dated Tuesday, March 29, 1960, you must find for the defendant."

18. For that during the trial an error of law occurred which was excepted to by the defendant, in that the court gave the following oral charge to the jury: "Now, the court is of the opinion and so charges you, gentlemen of the jury, that the matter complained of in Plaintiff's Exhibit No. 347, that's the controversial ad which you will have before you, and parts of which are set out in the Counts here in the complaint, belongs to that class of defamation called in law, libel per se."

19. For that during the trial an error of law occurred which was excepted to by the defendant, in that the Court gave the following oral charge to the jury: "We can say, as part of the law in this case, that a publication is libelous per se when they are such as to degrade the plaintiff in the estimation of his friends and the people of the place where he lives, as injure him in his public office, or impute misconduct to him in his office, or want of official integrity, or want of fidelity to a public trust, or such as will subject [fol. 2074] the plaintiff to ridicule or public distrust. All those kind of charges are called, libelous, per se."

20. For that during the trial an error of law occurred which was excepted to by the defendant, in that the Court gave the following oral charge to the jury: "Now, it is the contention of the plaintiff here that although you may believe, as to the four individual defendants, that they did not sign this advertisement and did not authorize it, yet it is the contention of the plaintiff, Sullivan, that the four individuals, the four individual defendants after knowing of the publication of the advertisement and after knowing of its content, ratified the use of their names, that is, they approved and sanctioned this advertisement. In other words, the plaintiff, Sullivan, insists that there was a ratification of the advertisement and the use of their names as signers of the advertisement by the four individual defendants and we here define ratification as the approval by a person of a prior act which did not bind him but which was professedly done on his account or in his behalf whereby the act, the use of his name, the publication, is given effect as if authorized by him in the very beginning. Ratification is really the same as a previous authorization

and is a confirmation or approval of what has been done by another on his account. Now, it is for you twelve jurors to say from all the evidence whether the four defendants ratified the advertisement now before you, that is, ratified that advertisement as I have defined the word ratification to you."

21. For that during the trial an error of law occurred which was excepted to by the defendant, in that the court gave the following oral charge to the jury: "We here define ratification as the approval by a person of a prior act which did not bind him but which was professedly done on his account or in his behalf whereby the act, the use of his name, the publication is given effect as if authorized by him in the very beginning."

22. The Court erred in overruling defendant's demurrers to the complaint and to each count thereof.

23. The Court erred in overruling defendant's amended demurrers to the complaint and to each count thereof.

24. The Court erred in denying and overruling the defendant's motion to exclude plaintiff's evidence, said motion having been made at the conclusion of the plaintiff's case.

25. The Court erred in denying and overruling the defendant's motion to exclude the plaintiff's evidence, said motion having been made at the conclusion of the introducing of all of the evidence in the case.

[fol. 2075] 26. There existed an irregularity in the proceedings of the Court by which the party defendant was prevented from having a fair trial in that the Court is a member of the Board of Jury Supervisor of Montgomery, Alabama; and that said Board selected jurors pursuant to Act No. 118 of March 8, 1939, said Act being unconstitutional, said selection of jurors thereunder by the Court being in violation of Article I, Section 11 of Alabama Code of 1901 and the Code of Alabama (1940) Title 7, Section 260, in that the Court as a member of the Board by so selecting those persons who are to decide the case decided both the facts and the law.

27. There existed an irregularity in the proceedings of the Court by which the party defendant was prevented from having a fair trial in that defendant was subjected to the exercise of judicial power before a tribunal which required its very facilities to be segregated on the basis of race and color and that the imposition of judicial power upon defendant in a segregated tribunal denied to defendant his right to due process and equal protection of the law as guaranteed him under the Alabama and Federal Constitutions.

28. There existed an irregularity in the proceedings of the Court which prevented the party defendant from having a fair trial in that Alabama's Constitutional Amendment of 1850 required the popular election of judges, said amendment being codified in Section 152 of the Alabama Constitution of 1901, and that under Section 152 a judge's lawful election to the court by all qualified electors is constitutionally pre-requisite to the lawful exercise of judicial power vested in the court by Article 6, Section 139 of the Alabama Constitution, that said Negro defendant is a member of a class of eligible qualified electors, and that Negroes have been intentionally, and systematically excluded from participating in the electoral selection of judges required by Section 152 of the Alabama Constitution and as a consequence thereof the imposition of judicial power over defendant Negro member of said systematically excluded class of qualified electors by a judge not lawfully elected results in taking of defendant's property without due process of law as guaranteed to defendant under the constitution and laws of the State of Alabama and the Federal Constitution; and deprives defendant of the equal protection of the law guaranteed him under the Fourteenth Amendment to the United States Constitution.

29. The record is so devoid of evidentiary support of the allegations alleged in the complaint, in that the plaintiff having failed to present any evidence upon which it could rationally be found that this defendant was legally responsible for the publication of the advertisement which is the basis of this suit, the verdict of the jury and the judgment of the Court against the defendant in the amount of

$500,000.00 deprived the defendant of due process of law [fol. 2076] in violation of the Constitution and laws of the State of Alabama.

30. The record is so devoid of evidentiary support of the allegations alleged in the complaint, in that the plaintiff having failed to present any evidence upon which it could rationally be found that this defendant was legally responsible for the publication of the advertisement which is the basis of this suit, the verdict of the jury and the judgment of the Court against the defendant in the amount of $500,000.00 deprived the defendant of due process of law in violation of the Fourteenth Amendment to the United States Constitution.

31. The record is so devoid of evidentiary support of the allegations alleged in the complaint, in that the plaintiff having failed to present any evidence upon which it could rationally be found that this defendant was legally responsible for the publication of the advertisement which is the basis of this suit, the verdict of the jury and the judgment of the court against the defendant in the amount of $500,000.00 deprived this defendant of his property without due process of law in violation of the Fourteenth Amendment to the United States Constitution.

32. The verdict of the jury and the decision of the Court against the defendant in the amount of $500,000.00 is not supported by any evidence, and as such, it deprives the defendant of his property without due process of law in violation of the Fourteenth Amendment to the United States Constitution.

33. The verdict of the jury and the decision of the court were not sustained by the great preponderance of the evidence.

34. The verdict of the jury and the decision of the court were not sustained by the great preponderance of the evidence as follows:

(a) The evidence showed clearly that the defendant did not publish nor cause to be published the advertisement which is the basis of this suit.

(b) The evidence showed clearly that defendant did not give his consent for his name to be placed on the advertisement, which advertisement is the basis of this suit.

(c) The evidence showed clearly that defendant had no prior knowledge that said advertisement was going to be published.

(d) The plaintiff's evidence failed to show any causal connection between the defendant and the alleged libelous matter stated in the complaint.

(e) There is no evidence in the record to show that the defendant ratified the alleged libelous matter contained in the complaint.

35. That the verdict of the jury and the decision of the court is contrary to law in that plaintiff is an official of the government of Alabama, and that the institution of this libel action for alleged defamation of plaintiff governmental official and the consequent imposition of damages upon de- [fol. 2077] fendant is an unconstitutional use of the judicial machinery of the State of Alabama infringing upon defendant's freedom of speech and association, violative of defendant's constitutional right under the First Amendment as incorporated into the Fourteenth Amendment to the Federal Constitution, in that said judgment of the court was imposed on defendant because of his well known past and present activities and views on civil rights, said view being diametrically opposed to those of plaintiff; said decision of the court having the practical effect of deterring and/or discouraging defendant's exercise of his constitutionally protected political rights of speech, press and association.

36. For that the verdict of the jury is contrary to the law and evidence in the case.

37. For that the verdict of the jury is not sustained by the great preponderance of the evidence and is contrary to both the law and the facts in the case.

38. For that the verdict of the jury is contrary to the law in the case.

39. For that the verdict of the jury is contrary to the facts in the case.

40. For that the verdict of the jury and the judgment entered thereon are contrary to the great weight and preponderance of the evidence in the case.

41. For that the verdict of the jury is excessive in that it is reported to have been the largest verdict ever rendered by a jury in the State of Alabama.

42. For that the verdict of the jury is so excessive as to shock the conscience of the court and was a result of bias, passion and prejudice against the defendants.

43. For that the verdict of the jury is excessive and as result of bias, passion, and prejudice against the defendants.

44. There existed an irregularity in the proceedings of the Court by which the party defendant was prevented from having a fair trial.

45. There existed an irregularity in the proceedings of the jury by which the party defendant was prevented from having a fair trial.

46. There existed an irregularity in the proceedings by the prevailing party, by which the defendant was prohibited from having a fair trial.

47. There existed an irregularity in an order of the Court by which the defendant was prevented from having a fair trial.

48. There existed in the case an abuse of discretion of the Court by which the defendant was prevented from having a fair trial.

49. The jury in the cause was guilty of a misconduct [fol. 2078] during the trial of the case.

50. The prevailing party was guilty of misconduct in the trial of the case.

51. For that during the trial an error of law occurred which was excepted to by the defendant.

52. For that during the trial an error of law occurred which was excepted to by the defendant, that is the failure of the Court to make special findings of the issues of the cause in the case after being asked to do so by the defendant in the cause.

53. For that the Court abused its discretion in denying the defendant's request for special findings of the issues in this cause in that the defendant requested that compensatory damages and punitive damages be assessed separately in the cause and the Court refused Defendant's request for such separate findings and the defendant was thereby prevented from having a fair trial of this cause.

54. For that the Court abused its discretion in denying the defendant's request for special findings of the issues in this cause.

55. For that all of the evidence produced at the trial relating to damages indicated that the plaintiff suffered no damage as a result of any action on the part of this defendant.

56. For that the trial Court erred in admitting in evidence over the defendant's objection the testimony of the plaintiff's witness Grover Hall as to his opinion that the advertisement, which advertisement is the basis of this suit, was of and concerning the plaintiff and his opinion as to other matters, which matters will more fully appear from the transcript of the record, which record has not been completed by the court reporter as of this date.

57. For that the trial court erred in admitting in evidence over the defendant's objection the testimony of the plaintiff's witness Arnold Blackwell as to his opinion that the advertisement, which advertisement is the basis of this suit, was of and concerning the plaintiff and his opinion as to other matters, which matters will more fully appear from the transcript of the record, which record has not been completed by the court reporter as of this date.

58. For that the trial court erred in admitting in evidence over the defendant's objection the testimony of the plaintiff's witness Mr. William McDonald as to his opinion

that the advertisement, which advertisement is the basis of this suit, was of and concerning the plaintiff and his opinion as to other matters, which matters will more fully appear from the transcript of the record, which record has not been completed by the court reporter as of this date.

[fol. 2079] 59. For that the trial court erred in admitting in evidence over the defendant's objection the testimony of the plaintiff's witness Mr. Harry Kaminsky as to his opinion that the advertisement, which advertisement is the basis of this suit, was of and concerning the plaintiff and his opinion as to other matters, which matters will more fully appear from the transcript of the record, which record has not been completed by the court reporter as of this date.

60. For that the trial court erred in admitting in evidence over the defendant's objection the testimony of the plaintiff's witness Mr. H. M. Price, Sr., as to his opinion that the advertisement, which advertisement is the basis of this suit, was of and concerning the plaintiff and his opinion as to other matters, which matters will more fully appear from the transcript of the record which record has not been completed by the court reporter as of this date.

61. For that the trial court erred in admitting in evidence over the defendant's objection the testimony of the plaintiff's witness Mr. William Parker as to his opinion that the advertisement, which advertisement is the basis of this suit, was of and concerning the plaintiff and his opinion as to other matters, which matters will more fully appear from the transcript of the record, which record has not been completed by the court reporter as of this date.

62. For that the trial court erred in admitting in evidence over the defendant's objection the testimony of the plaintiff's witness Mr. Horace D. White as to his opinion that the advertisement, which advertisement is the basis of this suit, was of and concerning the plaintiff and his opinion as to other matters, which matters will more fully appear from the transcript of the record, which record has not been completed by the court reporter as of this date.

Respectfully submitted,

Fred D. Gray, 34 No. Perry Street, Montgomery, Alabama;

Vernon Z. Crawford, 570 Davis Avenue, Mobile, Alabama;

Solomon S. Seay, Jr., 29 N. McDonough St., Montgomery, Alabama,

Attorneys for defendant, By: Solomon S. Seay, Jr., Attorney for Named defendant.

[File endorsement omitted]

[fol. 2080]

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

CONTINUANCE OF MOTION—December 2, 1960

The foregoing motion was presented to me on this the 2nd day of December, 1960, and it is hereby continued to the 16 day of December, 1960, at 11:00 A.M. for hearing. Execution is hereby stayed by the Court during the pendency of this motion.

Walter B. Jones, Circuit Judge, 15th Judicial Circuit of Alabama.

Certificate of Service (omitted in printing).

December 16, 1960. Motion continued for hearing at 10:00 A. M. January 14, 1961.

Walter B. Jones, Judge Presiding.